

EXHIBIT 3

EXHIBIT B-3

EXHIBIT B-3

FILE COPY



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS

P.O. BOX 1289

GALVESTON, TEXAS 77555-1289

JANUARY 23, 2003

REPLY TO
ATTENTION OF

Evaluation Section

SUBJECT: Permit No. 19284(03)

Houston International Terminal
Attn: CPT. Jack Roberts
2918 Green Tee Drive
Pearland, Texas 77581-5025

Dear CPT Roberts:

Your January 24, 2000, request to amend permit 19284(02) for an extension of time is approved pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Additionally, the mitigation plan to construct 9.0 acres of wetlands has been modified. Permit 19284 was issued on May 11, 1992 and authorized the dredging of sand for commercial sale and to create a barge berthing area, and required the creation of 15.2 acres of wetlands as mitigation for the project impacts. Amendment (01) extended the time for completion of the work until December 31, 1999. Amendment (02) reduced the required mitigation to 9.0 acres of created wetlands and modified the location of the mitigation site to be better protected from the normal flow of the river. The project is located in the San Jacinto River, along the south bank, north of the Interstate Highway 10 Bridge, in Channelview, Harris County, Texas.

All work is to be performed in accordance with the enclosed plans in 5 sheets, the mitigation plans, dated January 2, 2003, in 4 sheets and the original permit conditions, which remain in full force and effect, with the exception of the time limit for completion. This authorization expires on December 31, 2008. Please note the Notification of Administrative Appeal Options regarding this authorization as enclosed. This authorization is based on an approved jurisdictional determination. In addition to the original permit conditions, the following special conditions are added to your authorization:


1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

-2-

2. The permittee will conduct the mitigation project in accordance with the mitigation plan, dated January 02, 2003, in Attachment 1.

Please notify the District Engineer, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

FOR THE DISTRICT ENGINEER:


Bruce H. Bennett
Leader, North Evaluation Unit

Enclosures

Copies Furnished:

Eighth Coast Guard District, New Orleans, LA

U.S. Fish and Wildlife Service, Houston, TX

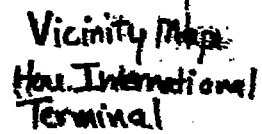
Texas General Land Office, Austin, TX

Texas General Land Office, La Porte, TX

Northern Area Office, Galveston, TX

Galveston Bay Foundation, TX

PLANS

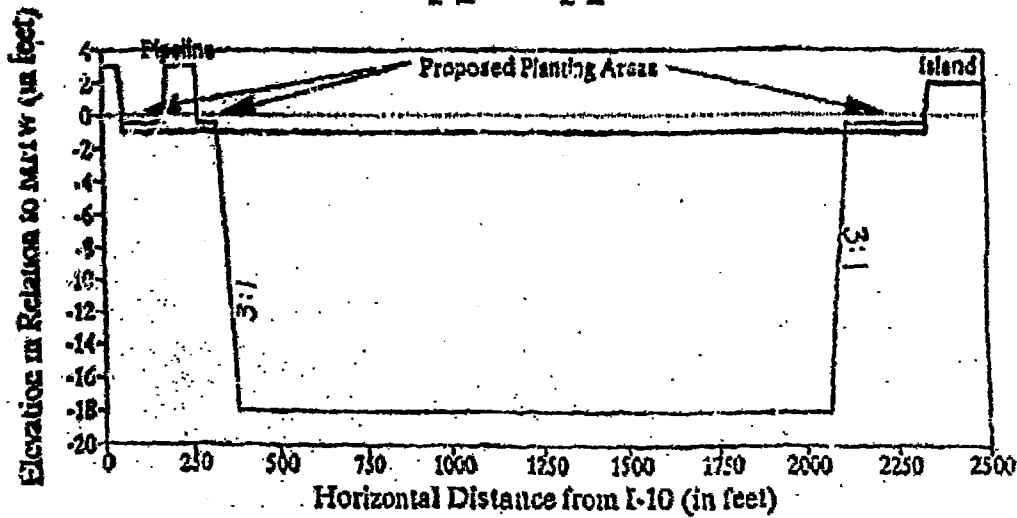


USGS Quad:
Highlands

19284(03)(02)

PERMITTED PLANS

Cross Section of Dredged Area A --- A



SLOPES = 3:1

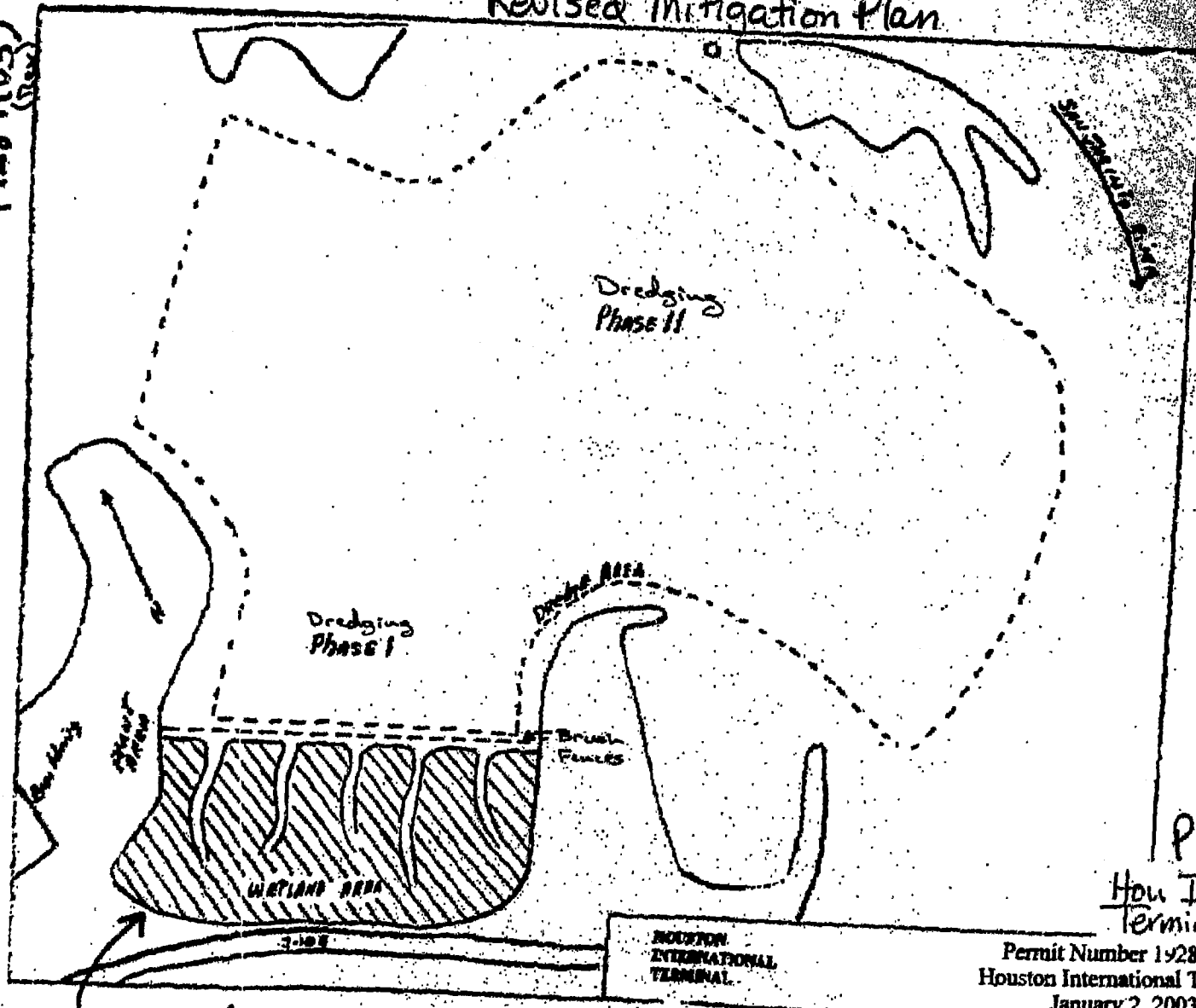
— Proposed Contour — Existing Contour

Cross-section A --- A of proposed mitigation

Permit Number 19284(03)
Houston International Terminal
January 2, 2003
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19284(03)
(Rev)

Revised Mitigation Plan



proposed mitigation
area (9.0 acres)

Plan View

Houston International
Terminal

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January 2, 2003
Page 3 of 5

PERMITTED PLAN 19284(03)
(Rev)

~300'

A

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Mitigation Plan

Brush Fence

~150'

~200'

~150'

~400'

WETLAND AREA

~1000'

Mitigation
Phase III

Mitigation
Phase II

Mitigation
Phase I

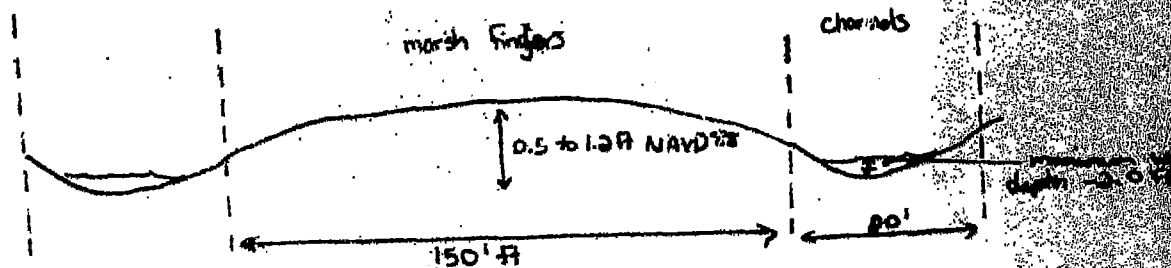
75%

70%

A

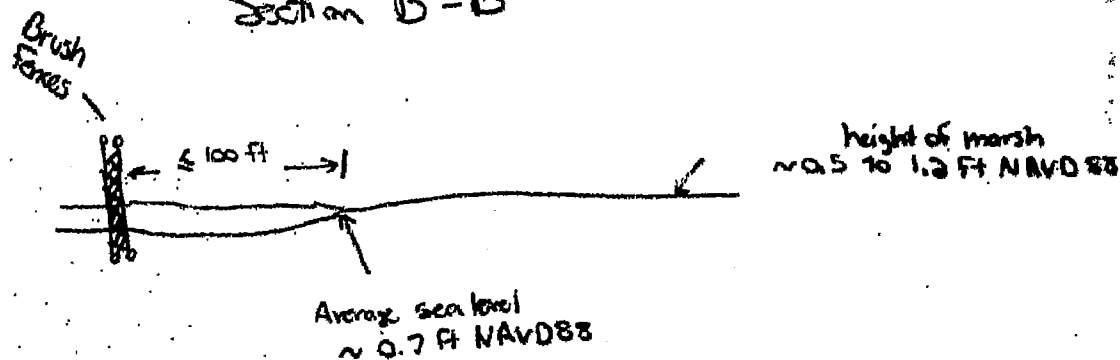
section views

Section A-A



N.T.S

Section B-B



PERMITTED PLAN

Houston International Terminal Permit Number 19284 (03)

Mitigation Plan

Purpose

This mitigation plan is designed to develop a 9.0-acre wetland, in three Phases, that is protected from the normal flow of the San Jacinto River and the erosion caused by tidal movements and boat traffic. The wetland areas will be protected on three sides by landmasses and on the river side by brush fences. The brush fences will allow normal tidal flow to take place to nurture the wetlands and will also provide a method of controlling the activities of herbivorous species, which could destroy developing wetland vegetation. The wetland area will be accessible from land, thereby making it easier to maintain.

Participants

The participants in the mitigation project will be:

Houston International Terminal (HIT)-owner of the site and holder of the permit

Dredging Contractor (DC)- the dredging contractor for HIT

Houston International Terminal owns the property and will enter into a contract with the DC to dredge the commercial sand from the property and to deposit the unwanted material into the designated wetland area to be developed as a wetland. Houston International Terminal will be solely responsible for the grading of material to suitable wetland elevations and the planting of target species. Additionally, all wetland vegetation and associated planting cost will be assumed by HIT.

Site

The property is located on the southwest side of the San Jacinto River, just north of Interstate Highway 10 (I-10) and contains approximately 200 acres, mostly under water. The proposed wetland area is shown on the attached drawing and is approximately 9.0 acres (1000 feet by 400 feet) in size. The wetland site is accessible from land and State right of way along I-10.

Currently, the wetland area has been fill above marsh creation elevations and needs to be graded to create the 9.0-acre wetland.

PERMITTED PLANS

Wetland Development and Timelines

The entire project when constructed will total 9.0 acres. The mitigation will be separated into three phases. Phase I will include the eastern most 300-foot-long by 400-foot-wide section. Phase II will include the central 300-foot-long by 400-foot-wide section. Phase III will include the western most 400-foot-long by 400-foot-wide section.

The construction of each phase will include the grading of material to a suitable elevation for the target vegetation, the excavation of the intertidal channels, the planting of the target vegetation, and initial survival monitoring of the target vegetation.

Upon six months from the start of construction within jurisdictional areas, the applicant must begin construction on Phase I of the mitigation. Upon 12 months from the start of construction within jurisdictional areas, the applicant must begin construction on Phase II of the mitigation. Upon 18 months from the start of construction within jurisdictional areas, the applicant must begin construction on Phase III of the mitigation. All Phases of the mitigation (I, II, and III) must be completed with construction and planted within 24 months from the start of construction within jurisdictional areas.

Upon the occurrence that the applicant cannot find a dredging contractor who begins work in jurisdictional areas within 18 months, from the date of the re-authorization, the permittee must begin the mitigation time line (as described above) and proceed with the construction of the mitigation site. The day, 18 months from the date of the re-authorization, will be the "start of construction within jurisdictional areas" date for the purpose of the starting the mitigation timeline. If the permittee fails to begin final construction of the mitigation area within 18 months, the permittee will be in violation of the permit and the permit may be suspended and may be turned over to the Compliance Section to be resolved.

Planting and Maintenance

Overall, the 9.0-acre mitigation site will be comprised of 150-foot-wide by 300-foot-long fingers planted with vegetation and the remaining 100-foot-long by 1000-foot-wide section. The elevation of the wetland areas will be between +0.5 and +1.2 feet NAVD 88. The fingers will be separated by 20-foot-wide by 300-foot-long intertidal channels that will be excavated. The channels will have a maximum bottom depth of -2.0 NAVD 88 that then slope up to the +0.5 feet NAVD 88 marsh elevation. The target species will be California bulrush (*Scirpus californicus*), salt marsh bulrush (*Scirpus robustus*), narrow-leaved cattail (*Typha angustifolia*), and bull-tongue (*Sagittaria lancifolia*).

PERMITTED PLANS

The four species will be planted and planting should be done on 6-foot centers as single species clumps each measuring 30 feet by 30 feet. Three-foot centers will be planted along the shorelines. After planting, the area will be monitored annually and a report containing information on the current status of the mitigation project, percent survival of the planted wetland vegetation, percent aerial coverage of the wetland vegetation, and any problems encountered will be submitted to the Corps' Compliance Section for review. The report will contain factual information, as well as photographic illustrations of the mitigation area. As the mitigation phases are constructed, solutions may include, but are not limited to, adjustment of the elevations within the mitigation area, additional control of herbivorous species, additional erosion control, etc... Annual reports will continue to be submitted for five years after planting Phase III of the mitigation area.

The mitigation area will be enclosed with plastic construction fencing nailed into wooden posts. If a brush fence is required to reduce wave erosion, the brush will be placed between two closely spaced rows of construction fencing. The fencing will also be installed in the uplands to reduce terrestrial herbivores. The fence will be removed when the minimum success criteria is met.

Success Criteria and Monitoring Reports

1. A transplant survival survey of the planted mitigation area must be performed within 60 calendar days following the initial planting effort for each phase. If at least 50% survival of transplants is not achieved within 60 calendar days of planting, a second planting effort will be completed within 60 calendar days of completing the initial survival survey. If optimal seasonal requirements for re-planting targeted species is not suitable when replanting would be required, the Corps Galveston District (Corps) must approve a re-planting schedule.
2. Written reports detailing plant survival must be submitted to the Corps within 30 calendar days of completing the initial survival survey and any subsequent replanting effort.
3. If after one year from the initial planting effort (or subsequent planting efforts) the site does not have at least 35% aerial coverage of targeted vegetation, those areas that are not vegetated will be replanted using the original planting specifications. If after two years from the initial planting effort (or subsequent planting efforts) the site does not have at least 50% aerial coverage of targeted vegetation, those areas that are not vegetated will be replanted using the original planting specifications.
4. If after five years from the initial planting effort (or subsequent planting efforts) the site does not have at least 70% aerial coverage of targeted vegetation, the applicant must submit a supplemental mitigation plant to the Corps' Compliance Section for approval to achieve 70% aerial coverage of target vegetation.

PERMITTED PLANS

5. In addition to the initial survey report, progress reports will be submitted to the Corps (Galveston District) at 6 months, 1 year, 2 year, 3-year, 4-year, and 5-year intervals following the initial transplanting effort or subsequent replanting efforts. Photos of the mitigation site should be included.

6. At no time will invasive, non-native species be allowed. If invasive, non-native species exceed 5% areal coverage within the mitigation site, the applicant will take measures to control and eradicate the species.

Applicant: Houston International Terminal		File Number: 19284(03)	Date: 01/23/2003
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION II: For the following questions, you must select one or more answers regarding an administrative appeal of the Corps' decision. Additional information may be found at <http://www.usace.army.mil/branch/operations/section/eng/OrCorpsregulations.cfm#CFRPart331>.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

REASONS FOR APPEAL OR OBJECTIONS. (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Ryan Fordyce, Regulatory Specialist
CESWG-PE-RE P.O. Box 1229
Galveston, Texas 77553-1229
Telephone: 409-766-3114; FAX: 409-766-3931

If you only have questions regarding the appeal process you may also contact:
James E. Gilmore, Appeal Review Officer
CESWD-ETO-R, 1100 Commerce Street
Dallas, Texas 75242-0216
Telephone: 214-767-2457; FAX: 214-767-9021
Email: James.E.Gilmore@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or authorized agent.	Date:	Telephone number:
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ACTIVITY SITE: Dodge/Newton

PERMITTEE: Baron Environmental Trust

ISSUE DATE: 24 Oct 92

EXPIRATION DATE: 31 Dec 93

INSPECTOR: Sam Brown

LOCATION OF ACTIVITY: Chain of I-P Bridge in Channel

COUNTY/TOWNSHIP: Harris

AREA OFFICE: FPAO

MITIGATION INVOLVED: YES ☒

NO ☐

STATUS OF ACTIVITY (Compliance with plans; stage of completion; remarks of permittee; etc. (See reverse side for status indicators))

(01) No Action - Done - Awaiting dredge -

Nothing done

Spoke w/ Mr. Jack Roberts on phone and
he informed me of this. He will call
if they begin work.

RECOMMENDATIONS: (ie. No Further Action Needed; Follow-up Inspection Recommended, etc.):

Follow-up in 10 months

INSPECTED BY: R. Jones

DATE INSPECTED: 8/21/92

STATUS INDICATORS

- (01) Active Permit-No Action (A)
- (02) Active Permit-Activity Incomplete, (A)
- (03) Expired Permit-Activity Complete-Satisfactory, (C)
- (04) Active Permit-Activity Complete-Satisfactory, (C)
- (05) Expired Permit-No Action (C)
- (06) Expired Permit-Activity Incomplete, (I)
- (07) Expired Permit-Activity Incomplete with Deviation from Plans, (I)
- (08) Expired Permit-Activity Complete with Deviation from Plans, (I)
- (09) Active Permit-Complete with Deviation from Plans, (I)
- (10) Active Permit-Activity Incomplete with Deviation from Plans, (I)

STATEMENT OF FINDINGS
FOR
EXTENSION OF TIME

1. Name and Address of Applicant.

Houston International Terminal
2918 Green Tee Drive
Pearland, Texas 77581-5025

2. Corps Authority. Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

3. Project and Site Description. The applicant is seeking an extension of time to complete the work authorized under the original permit. Additionally, the mitigation plan will be modified to incorporate specific plans and construction criteria to increase success of the area. The project is located in the San Jacinto River, along the south bank, north of the Interstate Highway 10 Bridge, in Channelview, Harris County, Texas. The USGS Quad reference map is: Highlands, Texas.

4. Background Information. The original permit was issued on 11 May 1992 and authorized the dredging of sand for commercial sale and to create a barge berthing area, and required the creation of 15.2 acres of wetlands as mitigation for the project impacts. Amendment (01) extended the time for completion of the work until 31 December 1999. Amendment (02) reduced the required mitigation to 9.0 acres of created wetlands and modified the location of the mitigation site to be better protected from the normal flow of the river. The previous locations of the mitigation site have been impacted by erosion and flooding. The modified location would be protected from erosion. Additionally, the Galveston Bay Foundation (GBF) would plant and maintain the mitigation site and would accept a conservation easement on the property to utilize the area as a smooth cordgrass (*Spartina alterniflora*) nursery.

During the comment period of this extension of time, several concerns have been raised with respect to the agreement between the applicant and the GBF. In the original permit's Addendum to Conceptual Mitigation Plan Prepared for Houston International Terminal, the GBF had made an agreement with the applicant to continue to plant cordgrass in the area for 4 more years. Also, the applicant would cooperate with the GBF in this endeavor if the dredging project is successful. In amendment (02), GBF continued to accept responsibility to plant and maintain the mitigation site. Due to GBF regime changes during this proposed extension of time, the GBF has no documentation or contracts with the applicant to construct the mitigation. Additionally, the GBF stated that the applicant did not provide them with financial support for the mitigation. The applicant had never obtained an easement for the mitigation site or had developed a contract

PERMIT APPLICATION - 19284(03)

other than verbal commitments with the former director of GBF. Through discussions with the applicant, it was decided to remove the GBF from every portion of the mitigation site and to hire an outside contractor to construct the mitigation. Therefore, the modified mitigation plan will omit the GBF as an acting party and remove the GBF conservation easement commitment.

5. Environmental Impacts. The possible consequences of this project were studied for environmental concerns, social well-being, and the public interests, in accordance with regulations published in 33 C.F.R. 320-330. Factors bearing on our review included: conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. An extension of time will be granted unless its approval is found to be contrary to the public interest.

6. Findings of No Significant Impact. There have been no significant environmental effects identified in relation to the project. The impact of the activity on the quality of the human environment has been evaluated, and it is determined that this action does not require an environmental impact statement.

7. Coordination. The documents and factors concerning this application were reviewed and evaluated in light of the overall public interest. It was determined that there have been no significant changes in the attendant circumstances since the authorization was issued, and that the work will proceed essentially in accordance with the approved plans and conditions. Therefore, a public notice was not required according to 33 C.F.R. 325.6(d).

The application was coordinated with concerned Federal and State resource agencies, as well as adjacent property owners, by letter dated 17 February 2000. The U.S. Fish and Wildlife Service (FWS) submitted a letter, dated 29 February 2000, stating that no significant adverse effects on fish and wildlife, their habitats, and human uses thereof, are expected to result from the proposed work activity. From the standpoint of fish and wildlife and their habitat the FWS has no objection to the issuance of these permits.

The National Marine Fisheries Service (NMFS) submitted a letter, dated 2 March 2000, stating that no information is included in the current request for an extension of time concerning which aspects of the project, if any have been completed. NMFS also stated that the project drawings are extremely vague and lack adequate details to ensure a properly planned wetlands mitigation plan. The proposed mitigation plan does not comply with current standard mitigation plan minimum success criteria or monitoring requirements. Herbivory issues and erosion protection issues need to be addressed. Without the aforementioned information and project revisions, NMFS cannot adequately assess the proposed impacts to Essential Fish Habitat (EFH) and associated living marine resources. The NMFS included the following EFH Conservation

PERMIT APPLICATION - 19284(03)

Recommendations:

1. Because the proposed mitigation has a high probability for failure due to herbivory and erosion, the applicant should be required to perform the initially required 15.2 acres of wetland creation as mitigation to compensate impacts to EFH and living marine resources.
2. All mitigation should be conducted by the applicant using established planting, monitoring, and reporting procedures, and all activities should be coordinated with both the Corps of Engineers, NMFS, and other state and Federal resource agencies.
3. To enhance functionality and habitat values in the created mitigation area, the design should incorporate tidal channels interspersed within vegetative planting areas that provide vegetation/water edge interface for living marine organisms.
4. The applicant should also address how the proposed mitigation plan will address erosion and herbivore grazing issues using currently employed technological solutions.

The NMFS also included other general recommendations:

1. All project plans and drawings need to be revised to reflect current site conditions. The current status of project and mitigation operations need to be updated and thoroughly discussed with all appropriate parties including the applicant, the Corps, NMFS, and other state and Federal resource agencies, and the GBF.
2. Detailed descriptions of the mitigation area construction, recontouring and filling techniques should be included as part of the permit conditions.
3. Detailed drawings of the proposed mitigation area should be revised to depict existing elevations and contours, proposed elevations and contours, elevations of any erosion protection features, herbivore fencing, target wetland plant area elevations, and the mean low and mean high water levels.

No response was received from the U.S. Environmental Protection Agency.

The Texas Parks and Wildlife Department submitted a letter, dated 1 April 2000, stating because of the current workload, their biologists are unable to adequately investigate this application, therefore, they can take no action on this permit at this time.

The Texas Coastal Coordination Council submitted a letter, dated 6 March 2000, stating that it has been determined that there are no significant unresolved consistency issues with respect to the project, therefore the project is consistent with the Coastal Management Program goals and policies.

PERMIT APPLICATION - 19284(03)

The GBF submitted a letter, dated 9 March 2000, stating that the GBF has no agreement for planting or a conservation easement with the applicant. Additionally, it appears that the mitigation for the permitted project has not been performed, and therefore the applicant is not in compliance with the original permit. Further extensions of time are not appropriate unless the applicant makes an effort to begin the mitigation immediately.

An inspection was conducted at the mitigation site, on 20 June 2002. In attendance were the applicant and the GBF. The GBF submitted a letter, dated 23 July 2002, stating that a measurable amount of fill material has been placed into the southern sections of all three mitigation phases at an even elevation. There were no tidal channels or planted vegetation present. The GBF has the following concerns and recommendations regarding the current state of the Phase I mitigation site:

1. The GBF agreed to assist with the proposed mitigation and accepted significant responsibility in the successful development, implementation, and completion of this project, yet we were not consulted concerning its implementation. There are not brush fences in place on the unprotected side of the mitigation site and the elevation of material is too high for *Spartina alterniflora*. The GBF is also concerned with the applicant beginning Phase II and III of the mitigation when Phase I is not complete.
2. Currently, because of the regime change at the GBF, the GBF is not aware of any previous agreement/contract between the GBF and the applicant. The GBF recommends that a formal conservation easement be signed and that funds for future plantings be agreed upon including appropriate allocations for replanting the site.
3. As previously recommended by NMFS, the GBF also recommends detailed mitigation plans be created with a feasible associated timeline for the completion of work.
4. The GBF stated that the dredged material currently being used as a fill may not be of an appropriate substrate for marsh restoration.

No other comments were received.

7. Consideration of Comments. The applicant had submitted a letter, dated 11 March 2002, stating that approximately 75% of the Phase I mitigation is complete and is growing above expectations. The cost of the mitigation operations is in line with the estimated removal of sand that everybody agreed upon at the beginning of dredging. Additionally, the applicant stated that the GBF is not needed to construct the mitigation. It is the applicant's intention to cooperate and comply with all parties' requirements.

PERMIT APPLICATION - 19284(03)

The mitigation plan was revised to incorporate NMFS comments received during the comment period. First, construction fencing will be used to reduce any potential impact caused by herbivores. The fencing will allow the vegetation and root system to establish without grazing. Therefore, the applicant will not increase the mitigation site to 15.2 acres as requested by NMFS. The mitigation was reduced to 9.0 acres in amendment (02). Secondly, the revised mitigation plan incorporates established planting, monitoring, and reporting procedures. Additionally, the mitigation plans incorporate tidal channels to increase the vegetation/water edge interface for increased utilization of marine organisms. Other recommendations included updated project plans, detailed descriptions of the mitigation area and contours, and descriptions of existing contours. The applicant has submitted improved mitigation plans with specific elevations based on local TPWD marsh projects. Currently, the applicant has begun the mitigation construction with assistance from a local nursery.

The applicant has addressed all of the NMFS and GBF comments and has included the majority of the specific requests into the mitigation plan. The NMFS submitted a letter, dated 13 January 2003, stating that the permit revisions have adequately addressed and are consistent with EFH recommendations. Therefore, no further consultation is required for this action.

7. Findings. The applicant's mitigation plan has been revised to exclude the GBF and to give specific timelines for the mitigation to be completed. Overall, the project is minimal and will not impact water quality or fish and wildlife values. The proposed request is for an extension of time and has been reviewed for impacts in the past. Therefore, the continuation of the project is minimal and is in the public's best interest. The following special conditions will be added to the authorization:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. The permittee will conduct the mitigation project in accordance with the mitigation plan, dated 2 January 2003, in Attachment 1.

PERMIT APPLICATION - 19284(03)

2. Conclusion. The decision to extend this permit, as prescribed by regulations published in 33 C.F.R. 320-330 is consistent with National policy statutes and administrative directives. On balance, extending the time for completion of work under Department of the Army Permit-19284(02) is not contrary to the public interest.

FOR THE COMMANDER:

1/17/03
(Date)

Kimberly A. McLaughlin
60 Bruce H. Bennett
Leader, North Evaluation Unit

EXHIBIT B-4



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

FILE COPY

December 27, 2007

REPLY TO
ATTENTION OF:

EXHIBIT B-4

Evaluation Section

SUBJECT: Permit No. SWG-2007-1865; Extension of Time

Captain Jack Roberts
2435 Broadway Street
Pearland, Texas 77581-6407

Dear Capt. Roberts:

Your request, dated October 31, 2007, to amend Permit No. 19284(03) for an extension of time is approved pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The permit site is located in the San Jacinto River, along the south bank, north of the Interstate Highway 10 Bridge, in Channelview, Harris County, Texas.

Permit No. 19284 was issued on May 11, 1992, and authorized dredging for sand for commercial sale and to create a barge berthing area. In addition, it required the creation of 15.2 acres of wetlands as compensatory mitigation for project impacts. Amendment (01) extended the time to complete the work until December 31, 1999. Amendment (02) reduced the required mitigation to 9.0 acres of created wetlands and modified the location of the mitigation site to better protect it from river flows. The previous mitigation site location was impacted by erosion and flooding. Amendment (03) extended the time to complete the authorized work until December 31, 2008.

All work is to be performed in accordance with the enclosed plans in 5 sheets, the Mitigation Plan, in 4 sheets, and the permit conditions, which remain in full force and effect, with the exception of the time limit for completion. This authorization expires on December 31, 2013.

Please notify the District Commander, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

FOR THE DISTRICT COMMANDER:

Janet Thomas Botelli
for Bruce H. Bennett
Leader, North Evaluation Unit

Enclosures

Copies Furnished:
(See Page 2)

Copies Furnished:

Eighth Coast Guard District, New Orleans, LA

NOAA/NOS, Coast & Geodetic Survey, Silver Spring, MD

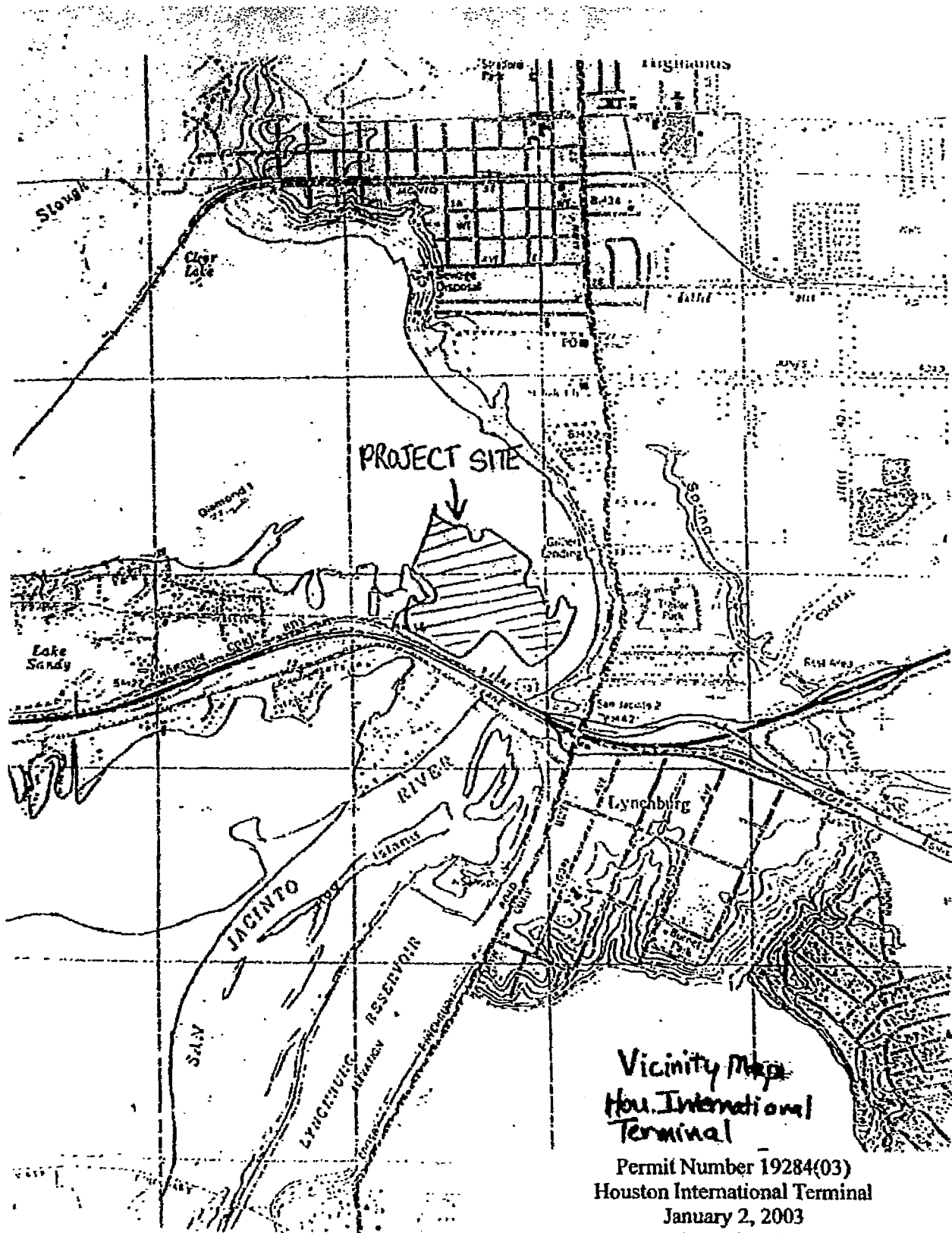
U.S. Fish and Wildlife Service, Houston, TX

Texas General Land Office, Austin, TX

Texas General Land Office, La Porte, TX

Northern Area Office, Galveston, TX

Houston Resident Office, Galveston, TX



Vicinity Map
Hou. International
Terminal

Permit Number 19284(03)
Houston International Terminal

January 2, 2003

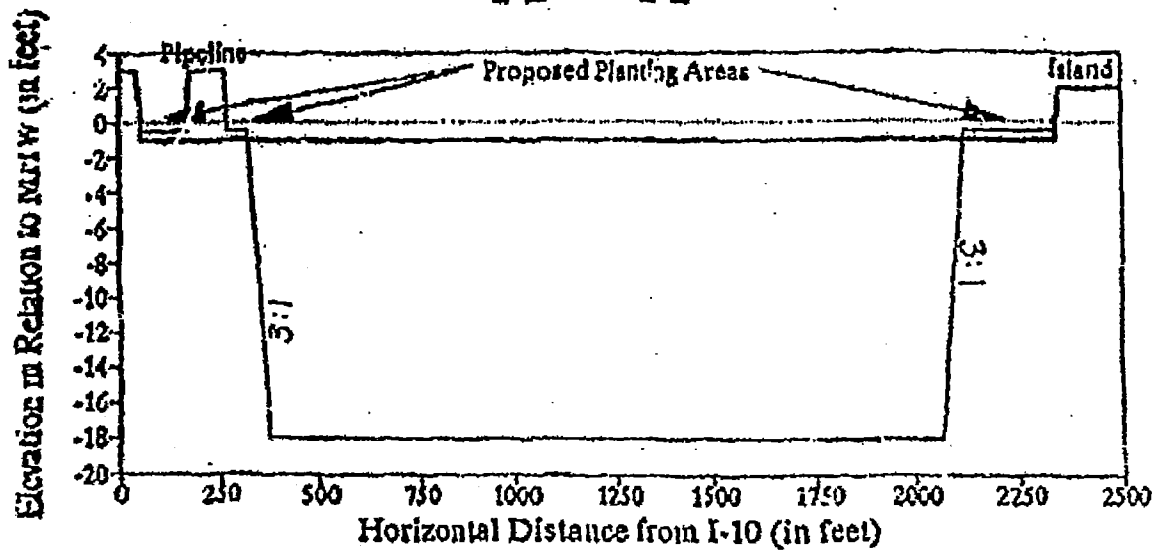
Page 1 of 5

SWG-2007-1865

USGS Quad:
Highlands

PERMITTED PLANS

Cross Section of Dredged Area A --- A



SLOPES = 3:1

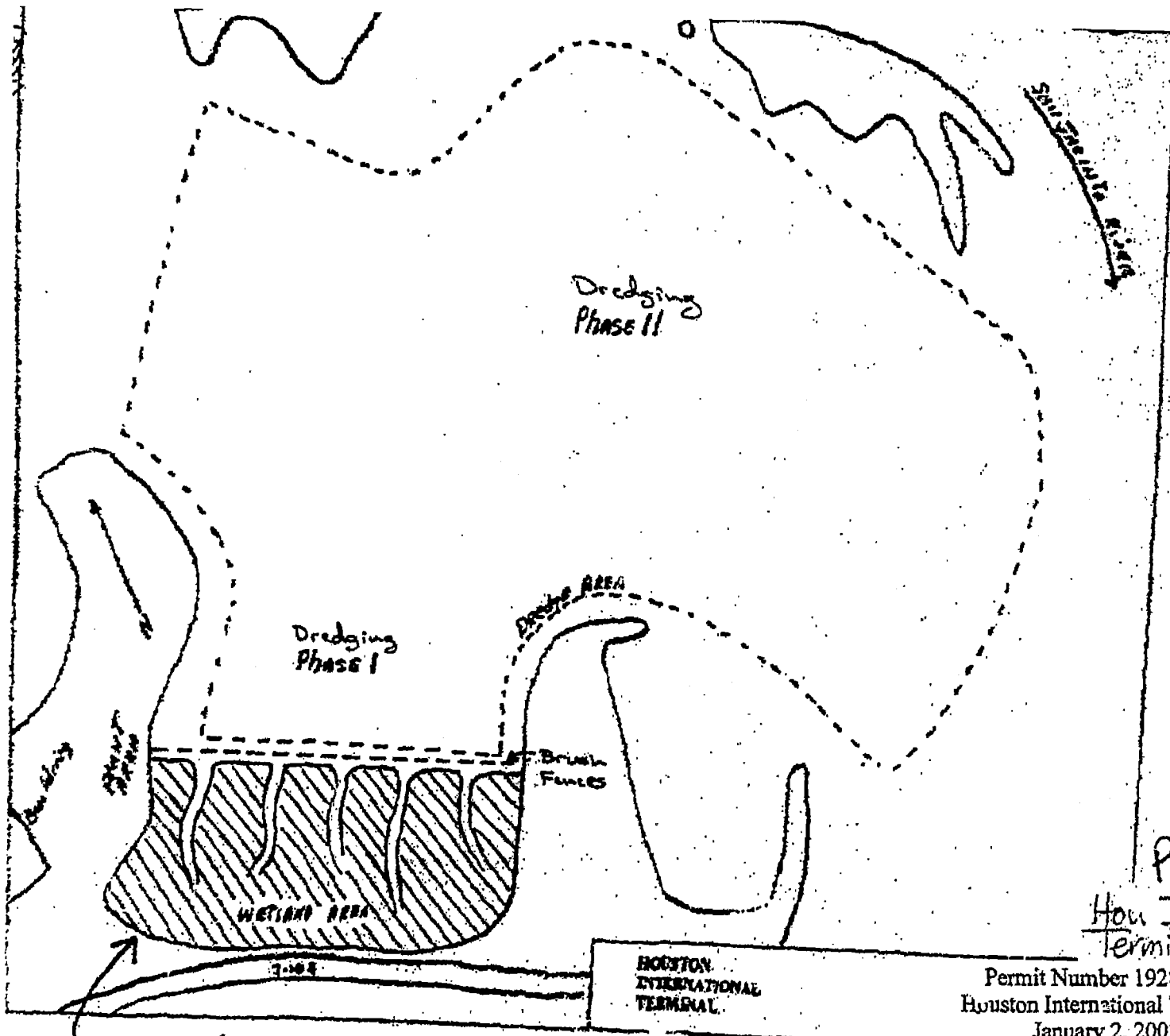
— Proposed Contour — Existing Contour

Cross-section A --- A of proposed mitigation

PERMITTED PLANS

Permit Number 19284(03)
Houston International Terminal
January 2, 2003
Page 2 of 5

206-2007-1865



Plan View

Houston International Terminal

Permit Number 19284(03)
Houston International Terminal
January 2, 2003
Page 3 of 5

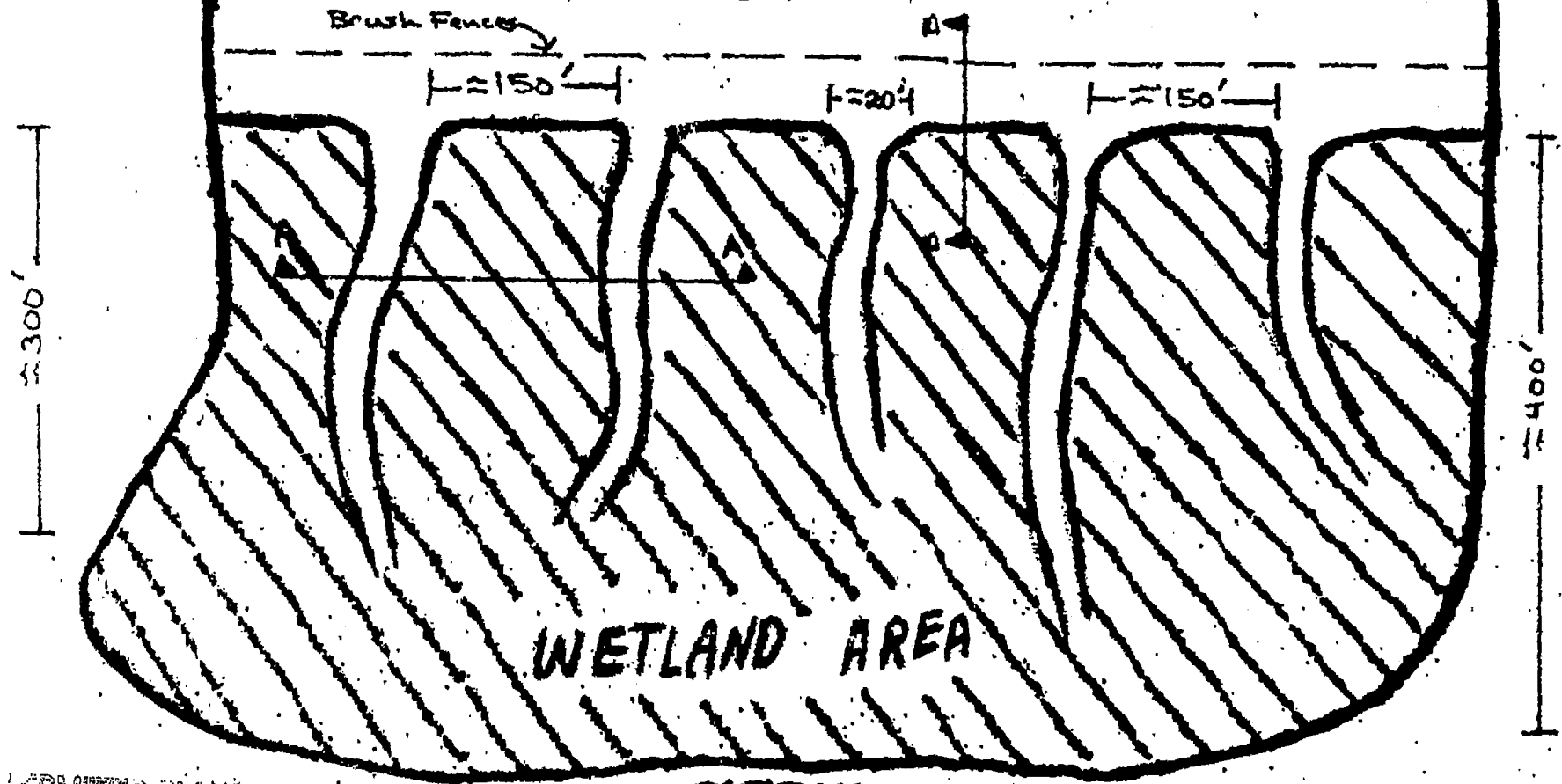
SWG-2007-1865

PERMITTED PLANS

Permit Number 19284(03)
Houston International Terminal
January 2, 2003
Page 4 of 5

SWG-2007-1865

Mitigation Plan



PERMITTED PLANS

~1000'

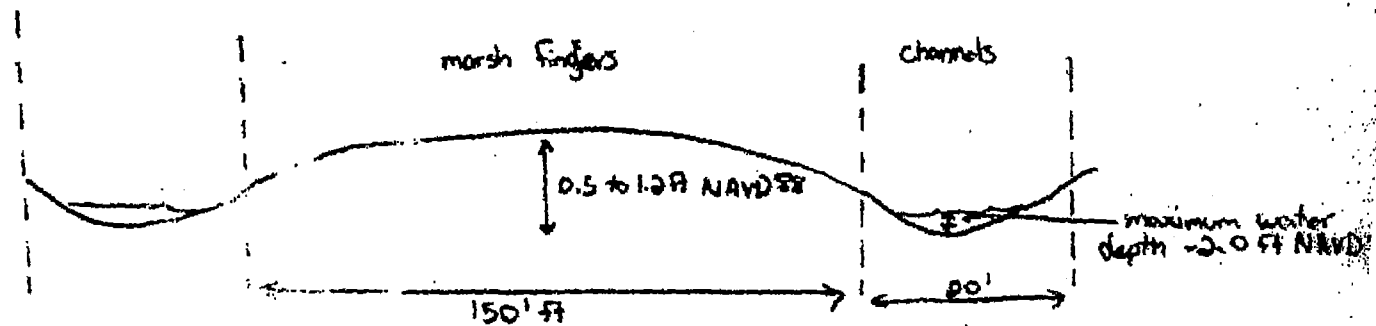
Mitigation
Phase III

Mitigation
Phase II

Mitigation
Phase I

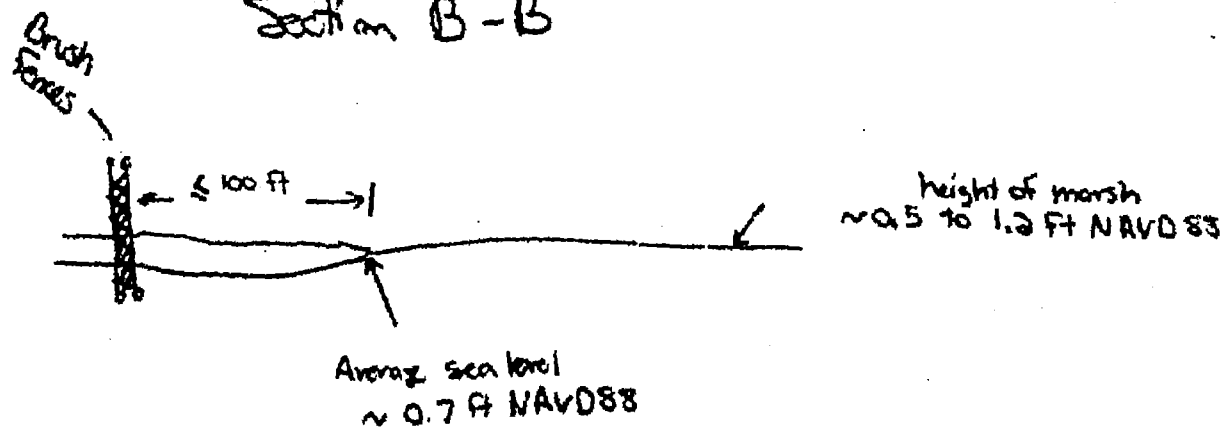
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3.6



N.T.S

Section B-B



PERMITTED PLANS

Permit Number 19284(03)
Houston International Terminal
January 2, 2003
Page 5 of 5

SWG-2007-1865

**Houston International Terminal
Permit Number 19284 (03)**

Mitigation Plan

Purpose

This mitigation plan is designed to develop a 9.0-acre wetland, in three Phases, that is protected from the normal flow of the San Jacinto River and the erosion caused by tidal movements and boat traffic. The wetland areas will be protected on three sides by landmasses and on the river side by brush fences. The brush fences will allow normal tidal flow to take place to nurture the wetlands and will also provide a method of controlling the activities of herbivorous species, which could destroy developing wetland vegetation. The wetland area will be accessible from land, thereby making it easier to maintain.

Participants

The participants in the mitigation project will be:

Houston International Terminal (HIT)-owner of the site and holder of the permit

Dredging Contractor (DC)- the dredging contractor for HIT

Houston International Terminal owns the property and will enter into a contract with the DC to dredge the commercial sand from the property and to deposit the unwanted material into the designated wetland area to be developed as a wetland. Houston International Terminal will be solely responsible for the grading of material to suitable wetland elevations and the planting of target species. Additionally, all wetland vegetation and associated planting cost will be assumed by HIT.

Site

The property is located on the southwest side of the San Jacinto River, just north of Interstate Highway 10 (I-10) and contains approximately 200 acres, mostly under water. The proposed wetland area is shown on the attached drawing and is approximately 9.0 acres (1000 feet by 400 feet) in size. The wetland site is accessible from land and State right of way along I-10.

Currently, the wetland area has been fill above marsh creation elevations and needs to be graded to create the 9.0-acre wetland.

Wetland Development and Timelines

The entire project when constructed will total 9.0 acres. The mitigation will be separated into three phases. Phase I will include the eastern most 300-foot-long by 400-foot-wide section. Phase II will include the central 300-foot-long by 400-foot-wide section. Phase III will include the western most 400-foot-long by 400-foot-wide section.

The construction of each phase will include the grading of material to a suitable elevation for the target vegetation, the excavation of the intertidal channels, the planting of the target vegetation, and initial survival monitoring of the target vegetation.

Upon six months from the start of construction within jurisdictional areas, the applicant must begin construction on Phase I of the mitigation. Upon 12 months from the start of construction within jurisdictional areas, the applicant must begin construction on Phase II of the mitigation. Upon 18 months from the start of construction within jurisdictional areas, the applicant must begin construction on Phase III of the mitigation. All Phases of the mitigation (I, II, and III) must be completed with construction and planted within 24 months from the start of construction within jurisdictional areas.

Upon the occurrence that the applicant cannot find a dredging contractor who begins work in jurisdictional areas within 18 months, from the date of the re-authorization, the permittee must begin the mitigation time line (as described above) and proceed with the construction of the mitigation site. The day, 18 months from the date of the re-authorization, will be the "start of construction within jurisdictional areas" date for the purpose of the starting the mitigation timeline. If the permittee fails to begin final construction of the mitigation area within 18 months, the permittee will be in violation of the permit and the permit may be suspended and may be turned over to the Compliance Section to be resolved.

Planting and Maintenance

Overall, the 9.0-acre mitigation site will be comprised of 150-foot-wide by 300-foot-long fingers planted with vegetation and the remaining 100-foot-long by 1000-foot-wide section. The elevation of the wetland areas will be between +0.5 and +1.2 feet NAVD 88. The fingers will be separated by 20-foot-wide by 300-foot-long intertidal channels that will be excavated. The channels will have a maximum bottom depth of -2.0 NAVD 88 that then slope up to the +0.5 feet NAVD 88 marsh elevation. The target species will be California bulrush (*Scirpus californicus*), salt marsh bulrush (*Scirpus robustus*), narrow-leaved cattail (*Typha angustifolia*), and bull-tongue (*Sagittaria lancifolia*).

The four species will be planted and planting should be done on 6-foot centers as single species clumps each measuring 30 feet by 30 feet. Three-foot centers will be planted along the shorelines. After planting, the area will be monitored annually and a report containing information on the current status of the mitigation project, percent survival of the planted wetland vegetation, percent aerial coverage of the wetland vegetation, and any problems encountered will be submitted to the Corps' Compliance Section for review. The report will contain factual information, as well as photographic illustrations of the mitigation area. As the mitigation phases are constructed, solutions may include, but are not limited to, adjustment of the elevations within the mitigation area, additional control of herbivorous species, additional erosion control, etc... Annual reports will continue to be submitted for five years after planting Phase III of the mitigation area.

The mitigation area will be enclosed with plastic construction fencing nailed into wooden posts. If a brush fence is required to reduce wave erosion, the brush will be placed between two closely spaced rows of construction fencing. The fencing will also be installed in the uplands to reduce terrestrial herbivores. The fence will be removed when the minimum success criteria is met.

Success Criteria and Monitoring Reports

1. A transplant survival survey of the planted mitigation area must be performed within 60 calendar days following the initial planting effort for each phase. If at least 50% survival of transplants is not achieved within 60 calendar days of planting, a second planting effort will be completed within 60 calendar days of completing the initial survival survey. If optimal seasonal requirements for re-planting targeted species is not suitable when replanting would be required, the Corps Galveston District (Coips) must approve a re-planting schedule.
2. Written reports detailing plant survival must be submitted to the Corps within 30 calendar days of completing the initial survival survey and any subsequent replanting effort.
3. If after one year from the initial planting effort (or subsequent planting efforts) the site does not have at least 35% aerial coverage of targeted vegetation, those areas that are not vegetated will be replanted using the original planting specifications. If after two years from the initial planting effort (or subsequent planting efforts) the site does not have at least 50% aerial coverage of targeted vegetation, those areas that are not vegetated will be replanted using the original planting specifications.
4. If after five years from the initial planting effort (or subsequent planting efforts) the site does not have at least 70% aerial coverage of targeted vegetation, the applicant must submit a supplemental mitigation plant to the Corps' Compliance Section for approval to achieve 70% aerial coverage of target vegetation.

5. In addition to the initial survey report, progress reports will be submitted to the Corps Galveston District at 6 months, 1 year, 2 year, 3-year, 4-year, and 5-year intervals following the initial transplanting effort or subsequent replanting efforts. Photos of the mitigation site should be included.

6. At no time will invasive, non-native species be allowed. If invasive, non-native species exceed 5% aerial coverage within the mitigation site, the applicant will take measures to control and eradicate the species.

EXHIBIT B-5

EXHIBIT B-5



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

SEP 27 1996

FILE COPY

Evaluation Section

SUBJECT: 19284(02)

Houston International Terminal
Attn: Captain Jack Roberts
2918 Green Tee Drive
Pearland, Texas 77581

Dear Captain Roberts:

Your request to modify Permit 19284(01) is approved. The modification consists of reducing the amount of required mitigation from creating 15.2 acres of vegetated marsh to 9.0 acres. The original permit authorized the dredging of sand for commercial sale and to provide a barge berthing area. The project is located in the San Jacinto River, along the south bank, north of the Interstate 10 bridge, in Channelview, Harris County, Texas.

The enclosed plans in eight sheets supersede sheets 1 - 6 of the original permit. All conditions of the original permit remain in full force and effect, including the expiration date of the permit which is December 31, 1998.

FOR THE DISTRICT ENGINEER:

Robert W. Heinly
Robert W. Heinly
Leader, South Evaluation Unit
27 SEP 1996
BL

Enclosure

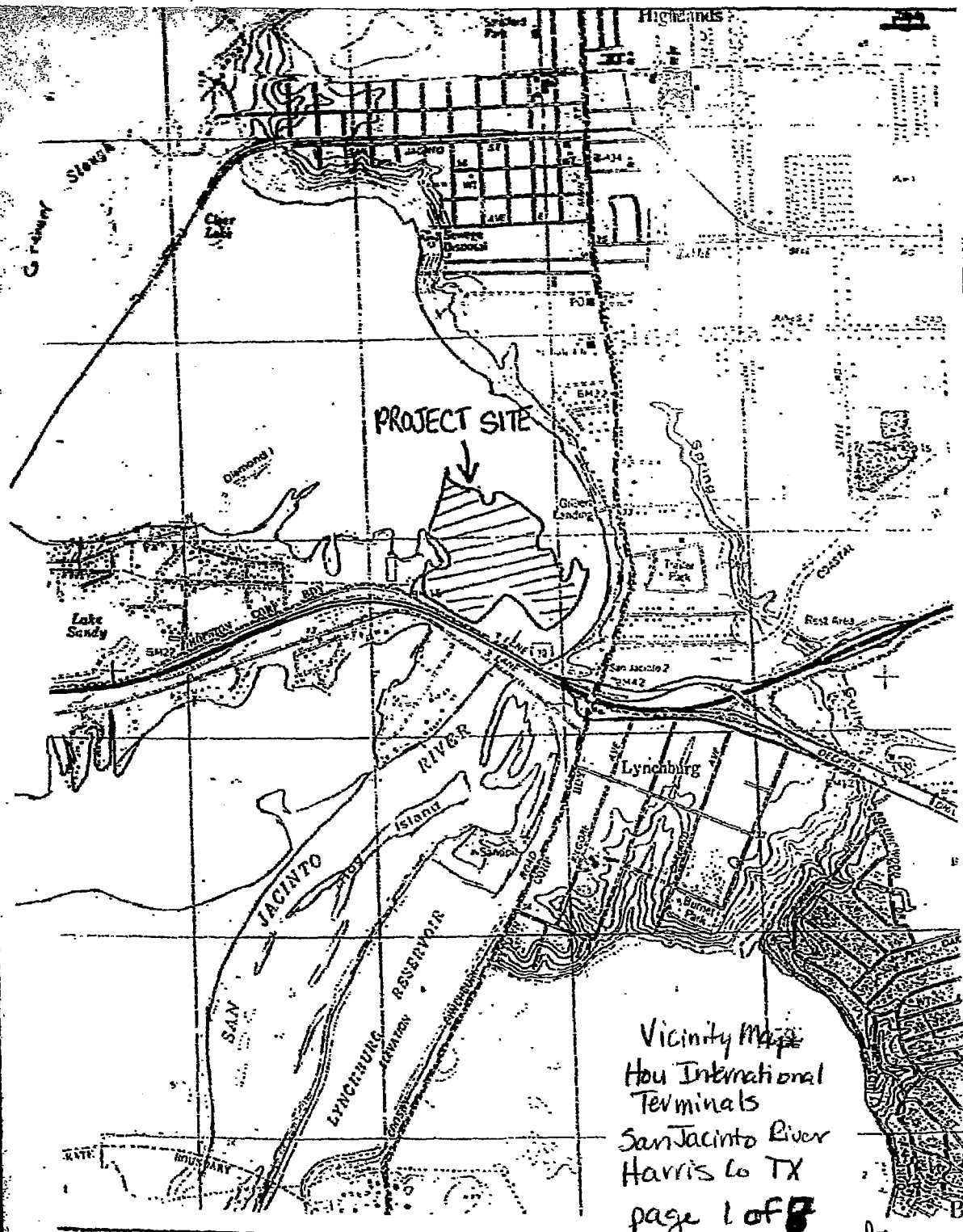
Copies Furnished:

Eighth Coast Guard District, New Orleans, LA

NOAA/NOS, Coast & Geodetic Survey, Silver Spring, MD

Texas General Land Office, Austin, TX

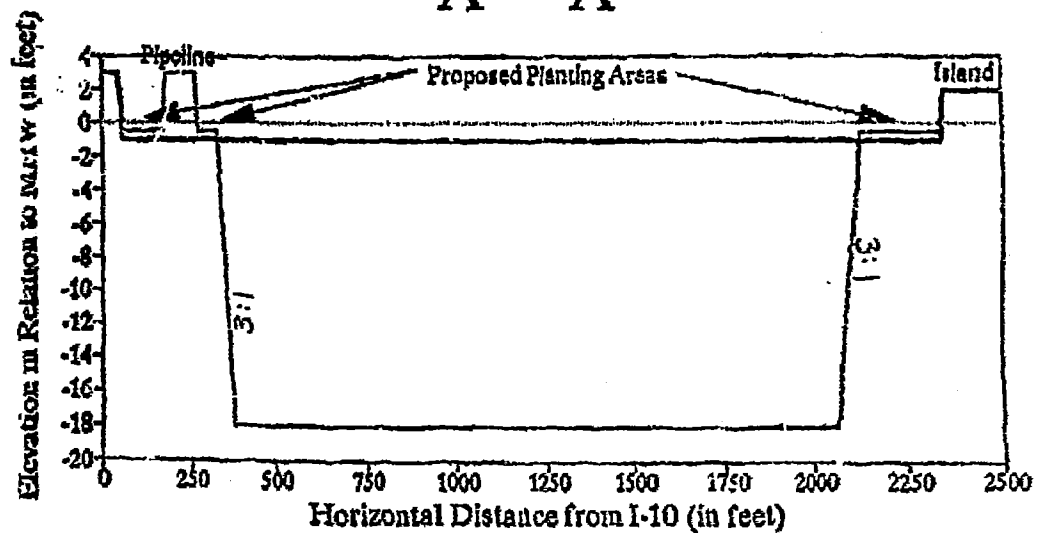
Texas General Land Office, La Porte, TX



Vicinity Map
Hou International
Terminals
San Jacinto River
Harris Co TX
page 1 of 8

19284(02)

Cross Section of Dredged Area A --- A



SLOPES = 3:1

— Proposed Contour — Existing Contour

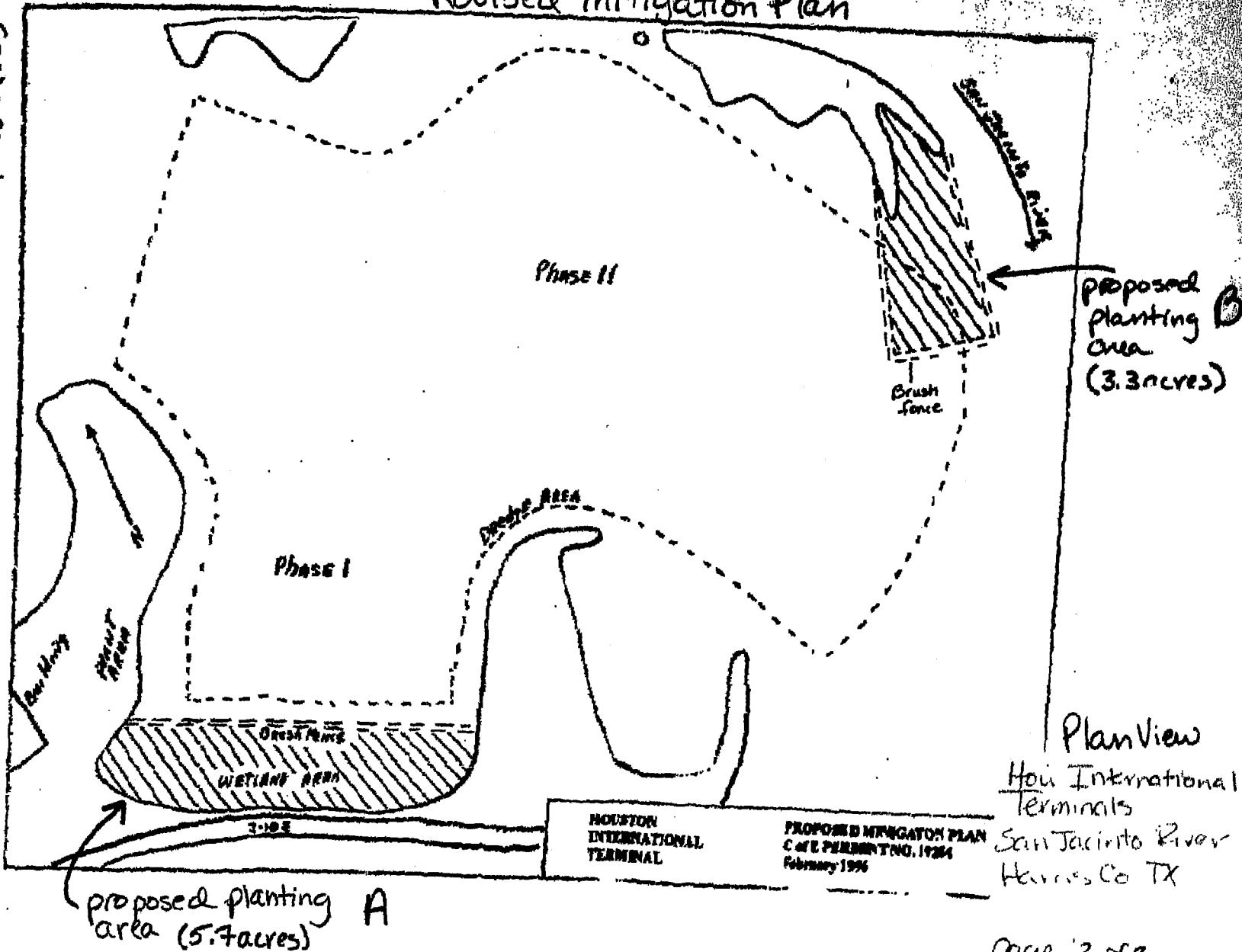
Cross-section A --- A of proposed mitigation

#19284(01)
HOUSTON INTERNATIONAL
TERMINALS

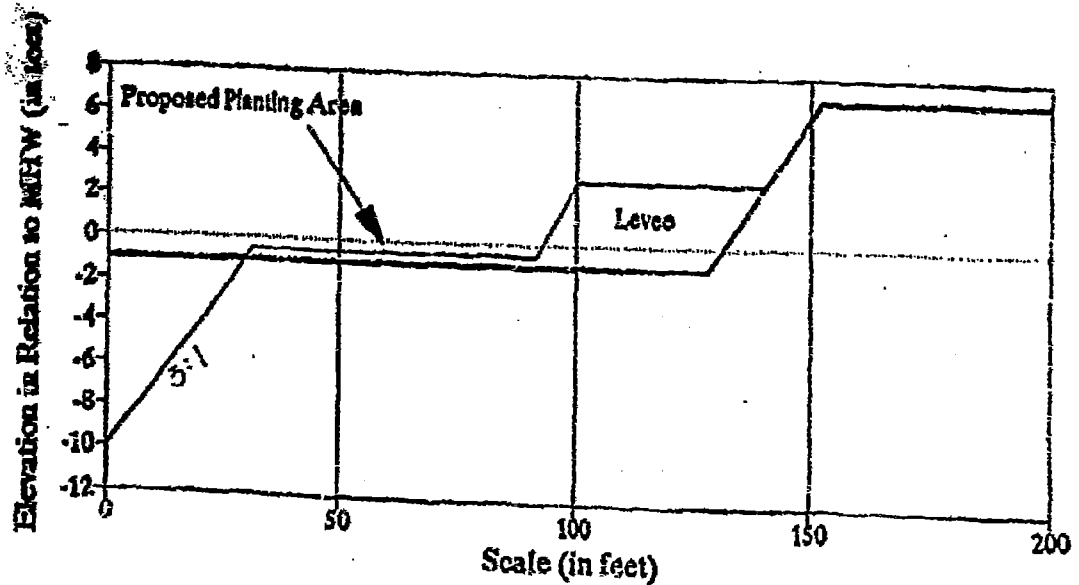
PG. 2 OF 8

19284(02)

Revised Mitigation Plan



Cross Section of Planting Area A



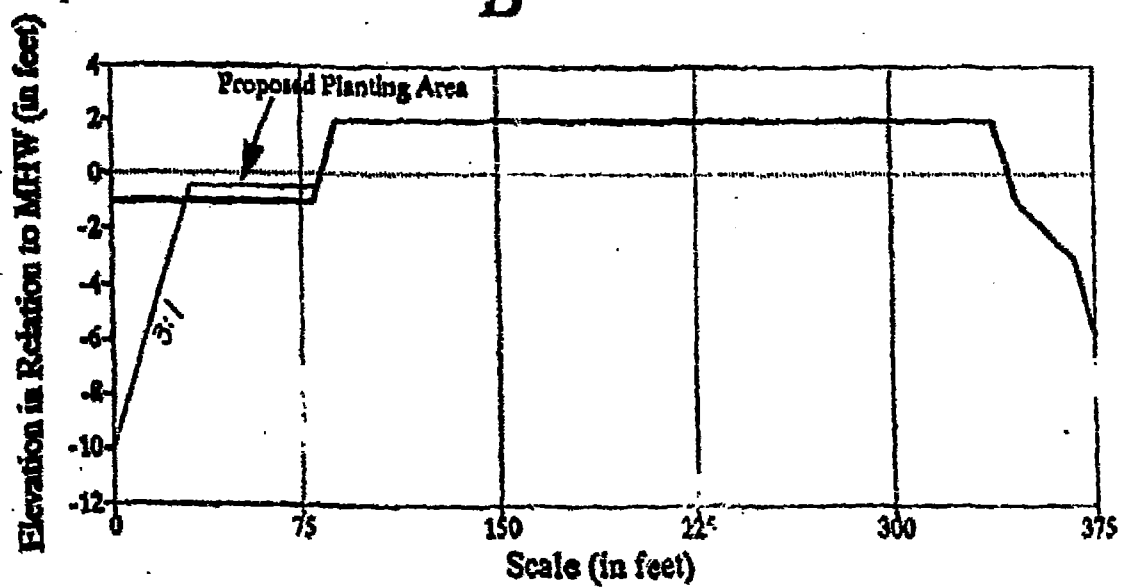
SLOPES = 3:1

— Proposed Contour — Existing Contour

Cross Section- Revised Mitigation

#19284 (08)
HOUSTON INTERNATIONAL
TERMINALS
San Jacinto River
Harris Co TX
page 4 of 8

Cross Section of Planting Area B



SLOPES = 3:1

— Proposed Contour — Existing Contour

Cross-section B --- B of proposed mitigation

#19281
HOUSTON INTERNATIONAL
TERMINALS

PG. 6 OF 8

19284(02)

PROPOSED ADDENDUM TO MITIGATION PLAN

CORPS OF ENGINEERS, GALVESTON DISTRICT
PERMIT NO. 19284

PERMIT HOLDER: HOUSTON INTERNATIONAL TERMINAL

PURPOSE

The purpose of this addendum to the original mitigation plan is to develop a wetland area that is protected from the normal flow of the San Jacinto River and the erosion caused by tidal movements and boat traffic. The wetland area will be protected on three sides by land masses and on the river side by brush fences. The brush fences will allow the normal tidal flows to take place to mature the wetlands and will also provide a method of controlling the activities of marine species which could destroy developing wetland vegetation. The wetland area will be accessible from land, thereby making it easier to maintain and to use as a teaching and demonstration area.

PARTICIPANTS

The participants in the project will be:

Houston International Terminal ("HIT") - owner of the site and holder of the permit

Dredging Contractor ("DC") - dredging contractor for HIT

Galveston Bay Foundation ("GBF") - environmental organization dedicated to protecting and restoring wetlands of the Galveston Bay System.

Houston International Terminal owns the property and will enter into a contract with the DC to dredge the commercial sand from the property and to deposit the non-commercial fill material into the area to be developed as a wetland. In a cooperative effort, HIT, DC and GBF will design the wetland area and construct brush fences to define the wetland area. The DC will discharge the non-commercial discharge into the area to a elevation suitable for the GBF to plant wetland vegetation. HIT will grant a conservation easement to GBF for use and maintenance of the wetland area and will assure that all applicable permits for the dredging and production operations are maintained.

SITE

The property is located on the west side of the San Jacinto River, just north of Interstate-10 and contains approximately 500 acres, mostly under water. The proposed wetland site is shown on the attached drawing and contains approximately 5.7 acres (1,000 ft. X 250 ft.). The wetland site is accessible from land and State right-of-way along I-10.

Mitigation Plan
Houston International
Terminals
San Jacinto River
Harris Co TX
page 6 of 8

19284(02)

DREDGING AND WETLAND DEVELOPMENT

Dredging for the project will begin in the area shown as Phase I on the drawing. The dredge will remove material from underwater in accordance with the permit. The dredged material will be pumped ashore where the commercial sand will be extracted and the non-commercial materials and water will be discharged into the wetland development area. A discharge pipe line will be used to control the depositing of the material. Brush fences will be constructed along the unprotected side of the area to encourage settlement of the discharge materials and to control access to the wetlands by marine species. As the area fills, additional brush fences will be constructed to expand the wetland area to the largest size possible, consistent with the amount of fill material available and the size of the wetland which will be manageable by GBF.

- When dredging is completed in the Phase I area, dredging will begin in the Phase II areas. The dredging area will be consistent with the original permit area.

PLANTING AND MAINTENANCE

The wetland area will be planted and maintained by the GBF. It is planned that the area will serve not only as an emerging wetland, but provide easily accessible educational benefits for GBF groups. The area will also be utilized as a nursery for the propagation of wetland agriculture to be used to develop other wetland projects.

The wetland will be planted with sprigs of smooth cordgrass, *Spartina Alterniflora*, on a maximum of three (3) foot centers.

Planting will begin when a sufficient area of wetland has been constructed to support the effort.

CONTINGENCIES

Test data indicates that there is sufficient commercially acceptable sand for the project and that there is a sufficient amount of non-commercial material within the dredge material to complete the minimum wetland area as shown. However, the exact amount of material cannot be accurately determined by testing. Construction of the wetland area will be completed as the dredging progresses, beginning with the area on the west side of the designated area. This will assure that a wetland area is developed which is accessible. The wetland area will be constructed as large as possible, depending upon the amount of non-commercial material. If the deposit becomes uneconomical to commercially produce, the material be found unsuitable for commercial use, the wetland fill be found unsuitable for use, or the quantity of wetland fill is depleted, construction of further wetland will cease and brush fencing will be constructed to protect the existing area.

Mitigation Plan
Hon International
Terminals
San Jacinto River
Harris Co TX
page 7 of 8

19284(02)

MITIGATION PLAN (continued)

The dredging will be performed in phases. The first phase would consist of planting 3.3 million transplants in 1985 and would begin between March 15 and May 31 of the first year of dredging operations. The second phase would consist of planting 3.3 million transplants concurrently with dredging operations over the 7 to 10 year life of the project. The commercial demand for sand will dictate the rate at which dredging occurs, a schedule that cannot be guaranteed for the second phase. The March 15-May 31 window will be adhered to whenever planting occurs.

To avoid damage to the marsh where the transplants will be acquired, no more than one six-inch plug of source material per one square yard will be obtained. In addition, the applicant will, to the greatest extent practicable, access the source material in the borrow marsh in a manner that does not destroy or lower the ground elevation of the marsh. Although the applicant would be willing to replant any areas with less than 70 percent survival through natural mortality after a one year period, this would not include mortality as a result of oil or chemical spills, boat traffic, hurricanes, or similar events beyond the applicant's control.

In addition, the proposed mitigation will be dependent upon whether or not there is sufficient sand to be commercially feasible. In this regard, once the permit is issued, minimal pilot dredging operation will be conducted in order to make this determination. If it is determined that there is insufficient sand to proceed, no additional dredging will occur and the applicant will not be bound to initiate or complete the mitigation.

Mitigation Plan
Hou International
Terminals
San Jacinto River
Harris Co TX
page 8 of 8

EVALUATION OF SECTION 404(b)(1) GUIDELINES - SHORT FORM

APPLICANT: Houston International Terminal APPLICATION NUMBER: 19284(02)

1. Review of Compliance (230.10(a)-(d)). A review of the permit application indicates that:

a. The discharge represents the least environmentally damaging practicable alternative and if in a special aquatic site, the activity associated with the discharge must have direct access or proximity to, or be located in the aquatic ecosystem to fulfill its basic purpose (if no, see section 2 and information gathered for EA alternative);

YES X NO*

b. The activity does not appear to:

1) Violate applicable state water quality standards or effluent standards prohibited under Section 307 of the CWA;

2) Jeopardize the existence of Federally listed endangered or threatened species or their habitat; and

3) Violate requirements of any Federally designated marine sanctuary (if no, see section 2b and check responses from resource and water quality certifying agencies);

YES X NO*

c. The activity will not cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values (if no, see values, section 2);

YES X NO*

d. Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (if no, see section 5).

YES X NO*

2. **Technical Evaluation Factors (Subparts C-F)** (Where a significant category is checked, add explanation below.)

NOT
N/A SIGNIFICANT SIGNIFICANT*

a. **Physical and Chemical Characteristics of the Aquatic Ecosystem (Subpart C)**

1) Substrate impacts	—	<u>X</u>	—
2) Suspended particulates/turbidity impacts	—	<u>X</u>	—
3) Water column impacts	—	<u>X</u>	—
4) Alteration of current patterns and water circulation	—	<u>X</u>	—
5) Alteration of normal water fluctuations/hydroperiod	<u>X</u>	—	—
6) Alteration of salinity gradients	<u>X</u>	—	—

b. **Biological Characteristics of the Aquatic Ecosystem (Subpart D)**

1) Effect on threatened/endangered species and their habitat	<u>X</u>	—	—
2) Effect on the aquatic food web	—	<u>X</u>	—
3) Effect on other wildlife (mammals, birds, reptiles and amphibians)	—	<u>X</u>	—

c. **Special Aquatic Sites (Subpart E)**

1) Sanctuaries and refuges	<u>X</u>	—	—
2) Wetlands	<u>X</u>	—	—
3) Mud flats	<u>X</u>	—	—
4) Vegetated shallows	<u>X</u>	—	—
5) Coral reefs	<u>X</u>	—	—
6) Riffle and pool complexes	<u>X</u>	—	—

d. **Human Use Characteristics (Subpart F)**

1) Effects on municipal and private water supplies	<u>X</u>	—	—
2) Recreational and Commercial fisheries impacts	—	<u>X</u>	—
3) Effects on water-related recreation	<u>X</u>	—	—
4) Aesthetic impacts	—	<u>X</u>	—
5) Effects on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves	<u>X</u>	—	—

3. Evaluation of Dredged or Fill Material (Subpart G)**

a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. (Check only those appropriate.)

- | | |
|--|---------------|
| 1) Physical characteristics | <u> X </u> |
| 2) Hydrography in relation to known or anticipated sources of contaminants | <u> </u> |
| 3) Results from previous testing of the material or similar material in the vicinity of the project | <u> X </u> |
| 4) Known, significant sources of persistent pesticides from land runoff or percolation | <u> </u> |
| 5) Spill records for petroleum products or designated (Section 311 of CWA) hazardous substances | <u> </u> |
| 6) Other public records of significant introduction of contaminants from industries, municipalities or other sources | <u> </u> |
| 7) Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities | <u> </u> |
| 8) Other sources (specify) | <u> X </u> |

List appropriate references.

The Texas Natural Resources Conservation Commission certified the project on 23 August 1996.

b. An evaluation of the appropriate information in 3a above indicates that there is reason to believe the proposed dredge or fill material is not a carrier of contaminants, or that levels of contaminants are substantively similar at extraction and disposal sites and not likely to degrade the disposal sites, or the material meets the testing exclusion criteria.

YES X NO

4. Disposal Site Delineation (230.11(f))

a. The following factors, as appropriate, have been considered in evaluating the disposal site:

- | | |
|---|-----------|
| 1) Depth of water at disposal site | <u>X</u> |
| 2) Current velocity, direction, and variability at disposal site | <u> </u> |
| 3) Degree of turbulence | <u>X</u> |
| 4) Water column stratification | <u> </u> |
| 5) Discharge vessel speed and direction | <u> </u> |
| 6) Rate of discharge | <u> </u> |
| 7) Dredged material characteristics (constituents, amount, and type of material, settling velocities) | <u> </u> |
| 8) Number of discharges per unit of time | <u> </u> |
| 9) Other factors affecting rates and patterns of mixing (specify) | <u> </u> |

List appropriate references.

b. An evaluation of the appropriate factors in 4a above indicates that the disposal site and/or size of mixing zone are acceptable.

YES X NO

5. Actions to Minimize Adverse Effects (Subpart H)

All appropriate and practicable steps have been taken, through application of recommendations of 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. List actions taken.

YES X NO

- a. Using appropriate equipment or machinery in activities related to the discharge of fill material.
- b. Siltation control device will be used to limit migration of sedimentation.
- c. 9.0 acres of vegetated wetlands will be created to compensate for dredging impacts to 9.25 acres of shallow water habitat.

6. **Factual Determination (230.11)** A review of appropriate information as identified in items 2-5 above indicates that there is minimal potential for short or long-term environmental effects of the proposed discharge as related to:

- | | |
|---|----------------------------|
| a. Physical substrate at the disposal site
(review sections 2a, 3, 4, and 5 above) | YES <u>X</u> NO* <u> </u> |
| b. Water circulation, fluctuation and salinity
(review sections 2a, 3, 4, and 5) | YES <u>X</u> NO* <u> </u> |
| c. Suspended particulates/turbidity
(review sections 2a, 3, 4, and 5) | YES <u>X</u> NO* <u> </u> |
| d. Contaminant availability
(review sections 2a, 3, and 4) | YES <u>X</u> NO* <u> </u> |
| e. Aquatic ecosystem structure and function
(review sections 2b and c, 3, and 5) | YES <u>X</u> NO* <u> </u> |
| f. Disposal site
(review sections 2, 4, and 5) | YES <u>X</u> NO* <u> </u> |
| g. Cumulative impact on the aquatic ecosystem | YES <u>X</u> NO* <u> </u> |
| h. Secondary impacts on the aquatic ecosystem | YES <u>X</u> NO* <u> </u> |

7. **Evaluation Responsibility**

a. This evaluation was prepared by: Sharon Manzella Tirpak *SMT*

Position: Regulatory Specialist

8. Findings

a. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) Guidelines.

X

b. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) Guidelines with the inclusion of the following conditions:

—

c. The proposed disposal site for discharge of dredged or fill material does not comply with the Section 404(b)(1) Guidelines for the following reason(s):

- 1) There is a less damaging practicable alternative —
- 2) The proposed discharge will result in significant degradation of the aquatic ecosystem —
- 3) The proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem —

Russel
Heinly
Nanninga

20 Sep 96
(date)

Marcos De La Rosa
Marcos De La Rosa, P.E.
Chief, Regulatory Branch

DATE: 12 Sept 1996

Permit: 19284(02)

SUMMARY: Talked with John Moran about who was going to do the second mitigation site (the 3.3 acres on the northern portion of the project site). He said that Galveston Bay Foundation was under agreement to plant the first site, the 5.7 acres in the protected cove. This was also going to be designated as a conservation easement. They had not worked out any agreement on GBF doing the planting on the 3.3 acres, however, they plan to do that when the time arises. Also, the paragraph on page 6 of the plans talks about a contingency plan as to if the sand is not of economic value, then dredging would cease and no further mitigation would be completed. The applicants do understand that mitigation has to be completed concurrently with the dredging and will be completed in proportion to the amount of dredging completed.

PROJECT MANAGER: Sharon Manzella Tirpak SMT

EXHIBIT B-6

EXHIBIT B-6



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

MAY 18 2009

Policy Analysis Section

SUBJECT: Permit: SWG-2007-01865, Captain Jack Roberts; Suspension

Captain Jack Roberts
2435 Broadway Street
Pearland, Texas 77581-6407

Dear Capt. Roberts:

This is to notify you that Department of the Army (DA) permit SWG-2007-01865 has been suspended. DA permit SWG-2007-01865 was authorized December 27, 2007, to amend DA permit 19284(03) for an extension of time and to modify the mitigation plan to incorporate specific plans and construction criteria to increase success. The project is located in the San Jacinto River, along the south bank, north of the Interstate Highway 10 Bridge, in Channelview, Harris County, Texas.

The original DA permit 19284 was issued on May 11, 1992 and authorized the dredging of sand for commercial sale and to create a barge berthing area, and required the creation of 15.2 acres of wetlands as mitigation for the project impacts. Amendment (01) extended the time for completion of that work until December 31, 1999. Amendment (02) reduced the required mitigation to 9.0 acres of created wetlands and modified the location of the mitigation site. Amendment (03) also modified the mitigation plan.

In a letter dated March 31, 2009 (attached), Texas Commission on Environmental Quality (TCEQ) informed us they have suspended 401 Water Quality Certification for DA permit SWG-2007-01865 due to the purported water quality issues involving the contaminant dioxin.

Pursuant to 33 CFR 325.7, I may reevaluate the circumstances and conditions of a permit, at the request of a third party and initiate action to suspend or revoke a permit as may be made necessary by considerations of the public interest. Among the factors I must consider in a determination to suspend, is whether any significant objections to the authorized activity which were not earlier considered have occurred. The suspension of TCEQ 401 Water Quality Certification not only constitutes a significant objection, but ultimately renders SWG-2007-01865 void as a required condition of the permit. As required by 33 CFR 325.7(c), I am ordering you to stop those activities previously authorized by the permit to allow TCEQ the time necessary to assess any water quality issues. Following this suspension, a decision will be made to reinstate, modify, or revoke the permit.

Within 10 days of receipt of this notice of the suspension, you may request a meeting with me, and/or a public hearing to present information in this matter. If a hearing is requested, the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the meeting or hearing, or within a reasonable period of time if no hearing or meeting is requested, I will take action to reinstate, modify, or revoke the permit.

If you have any questions regarding this matter, please contact Mr. Sam Watson at the letterhead address or by telephone at 409-766-3946.

Sincerely,

David C. Weston
Colonel, Corps of Engineers
District Commander

(Copy Furnished -- See Page 3 and 4)

Copies Furnished:

Miguel I. Flores
Director, Water Quality Protection Division
Environmental Protection Agency (6WQ)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

Mark R. Vickery
Executive Director
MC109
P.O. Box 13087
Austin, Texas 78711-3087

Stephen Tzhone
Remedial Project Manager (RPM)
EPA - Region 6 [6SF-RA]
1445 Ross Avenue
Dallas, Texas 75202

Bob Werner
EPA Enforcement Project Manager
EPA - Region 6 [6SF-TE]
1445 Ross Avenue
Dallas, Texas 75202

Barbara Nann
EPA Office of Counsel
EPA - Region 6 [6RC-S]
1445 Ross Avenue
Dallas, Texas 75202

Jim Herrington
EPA, Region 6
Blackland Research Center
720 East Blackland Road
Temple, Texas 76502

Mark Fisher
Texas Commission on Environmental Quality
Water Quality Standards Team
P.O. Box 13087, MC-150
Austin, Texas 78711-3087

Marshall Cedilote
Remediation Project Manager
Texas Commission on Environmental Quality
P.O. Box 13087, MC-136
Austin, Texas 78711-3087

Larry Koenig
TMDL Study Project Manager
Texas Commission on Environmental Quality
P.O. Box 13087, MC-203
Austin, Texas 78711-3087

Carter Smith
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

Pat Radloff
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

William (Jamie) Schubert
Texas Parks & Wildlife Department
Coastal Conservation Branch
Resource Protection Division
1502 Pine Drive (FM 517)
Dickinson, Texas 77539

APR 06 2009

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 31, 2009

Colonel David C. Weston
Galveston District Commander
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Colonel Weston:

I am writing in response to your January 8, 2009 letter to the Texas Commission on Environmental Quality (TCEQ) regarding U.S. Army Corps of Engineers' (Corps) permit number SWG-2007-01865 authorizing sand mining on the west side of the San Jacinto River north of Interstate Highway 10. The TCEQ last certified this Section 401 permit during the second permit amendment in 1996. Subsequently, the Corps issued the fourth amendment on December 27, 2007, however there was no coordination with the respective state agencies.

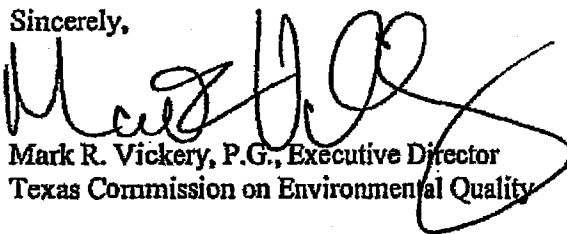
In TCEQ's October 29, 2008 response to your original August 11, 2008 letter on this subject, the agency requested that the Corps suspend or revoke permit SWG-2007-01865. Suspension/revocation of this permit was requested because of the potential for violations of Texas Surface Water Quality Standards resulting from the resuspension of dioxin during the sand mining authorized by this permit. The TCEQ anticipated this request would qualify as a third party request under 33 Code of Federal Regulations (CFR) 325.7, based upon a change of circumstances related to the authorized activity. Specifically, these changes in circumstances include the listing of the San Jacinto River Waste Pits on the United States Environmental Protection Agency's National Priority List and data (Attachment B) developed by the TCEQ's Total Maximum Daily Load program regarding dioxin contamination in this area.

The TCEQ is very concerned about the continued authorization of activities authorized by SWG-2007-01865 and reiterates the request for the Corps to suspend or revoke the permit. Therefore, the TCEQ suspends the 401 certification of permit SWG-2007-01865 until 30 days after TCEQ receives notice of the Corps' decision under the 33 CFR 325.7 process. Please notify us of your decision on the permit.

Colonel David C. Weston
Page 2
March 31, 2009

The TCEQ remains committed to the partnership of combining the responsibilities of both agencies into a single permit decision. I have included a presentation (Attachment A) and data developed by the TCEQ's Total Maximum Daily Load program regarding dioxin contamination in this area. We would be glad to provide additional information on specific dioxin congeners if needed. Should you have any questions regarding this or any other information, please contact L'Oreal Stepney of the TCEQ's Water Quality Division at (512) 239-1321.

Sincerely,



Mark R. Vickery, P.G., Executive Director
Texas Commission on Environmental Quality

Enclosures

cc: Carter Smith, Executive Director, Texas Parks and Wildlife, 4200 Smith School Road, Austin, Texas 78744-3291
Sharon Parrish, U. S. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733
Sam Watson, U.S. Army Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553-1229

Sand Mining in the Waste Pit Area



TFWD letter

Legend

Total TEQ (ng/kg-oc)

- △ 976.0 - 2587.6
- ⊙ 2587.7 - 5048.6
- ★ 5048.7 - 16224.6
- 16224.7 - 26298.8
- 26298.9 - 66147.8
- 310731

- Presidence shoreline
- Waste pit location
- Wetland mitigation area
- Sand mining operations



Total TEOL 420440-013

- ▲ 975.D-25973
 ② 25977-50411
 ③ 50483-152245
 ④ 152247-252598
 ● 252599-981478
 ■ 310731

Presidential Store Inc.

☐ Waste pit location

Wetland mitigation area

Send mining operations

Site 11

Site 15

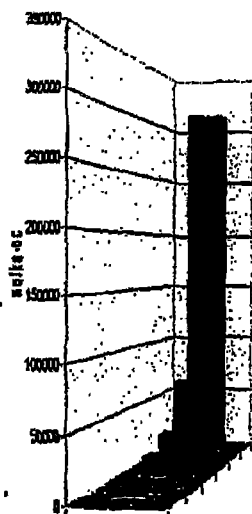


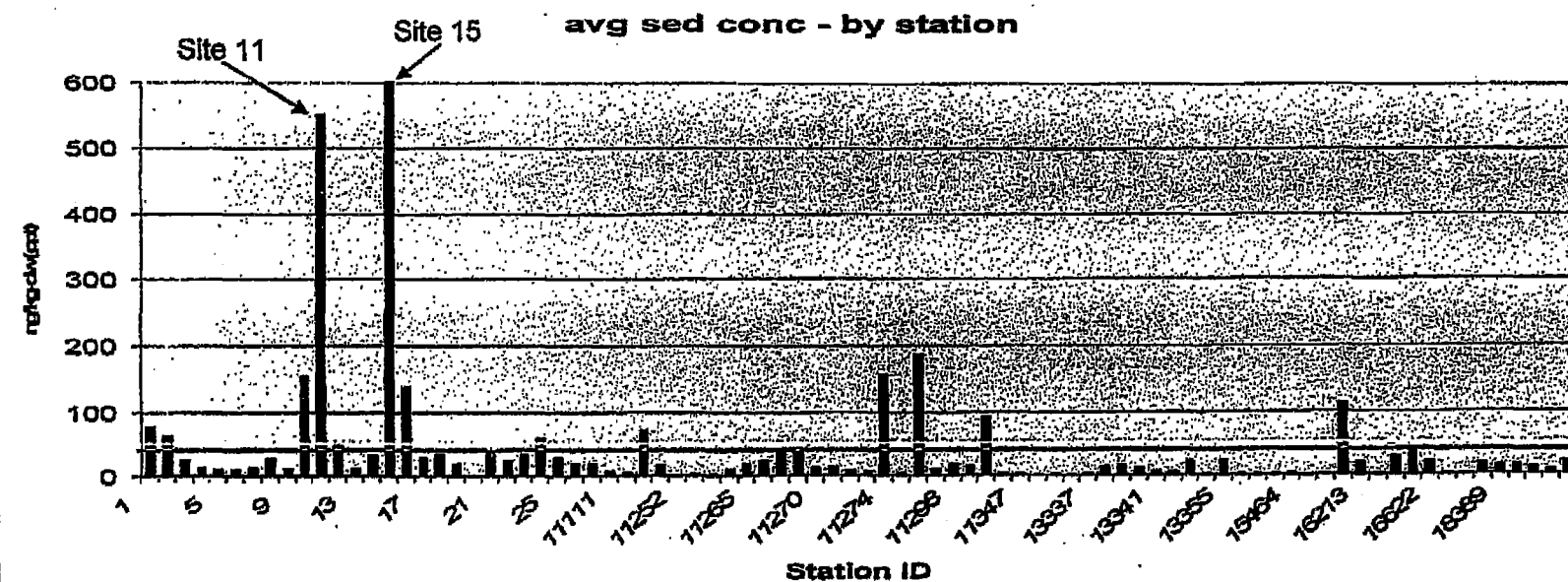
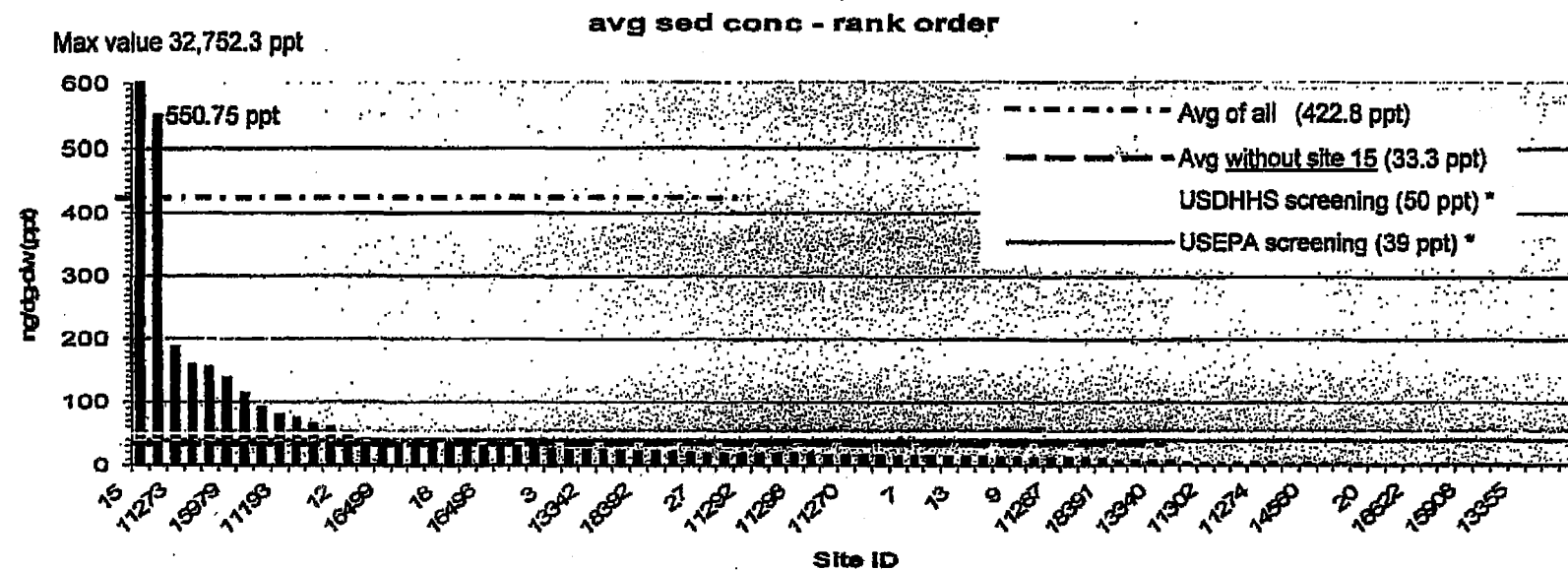
Figure 3.11
Dioxin Concentrations from High-resolution
Sampling in Summer 2005 (fDD)

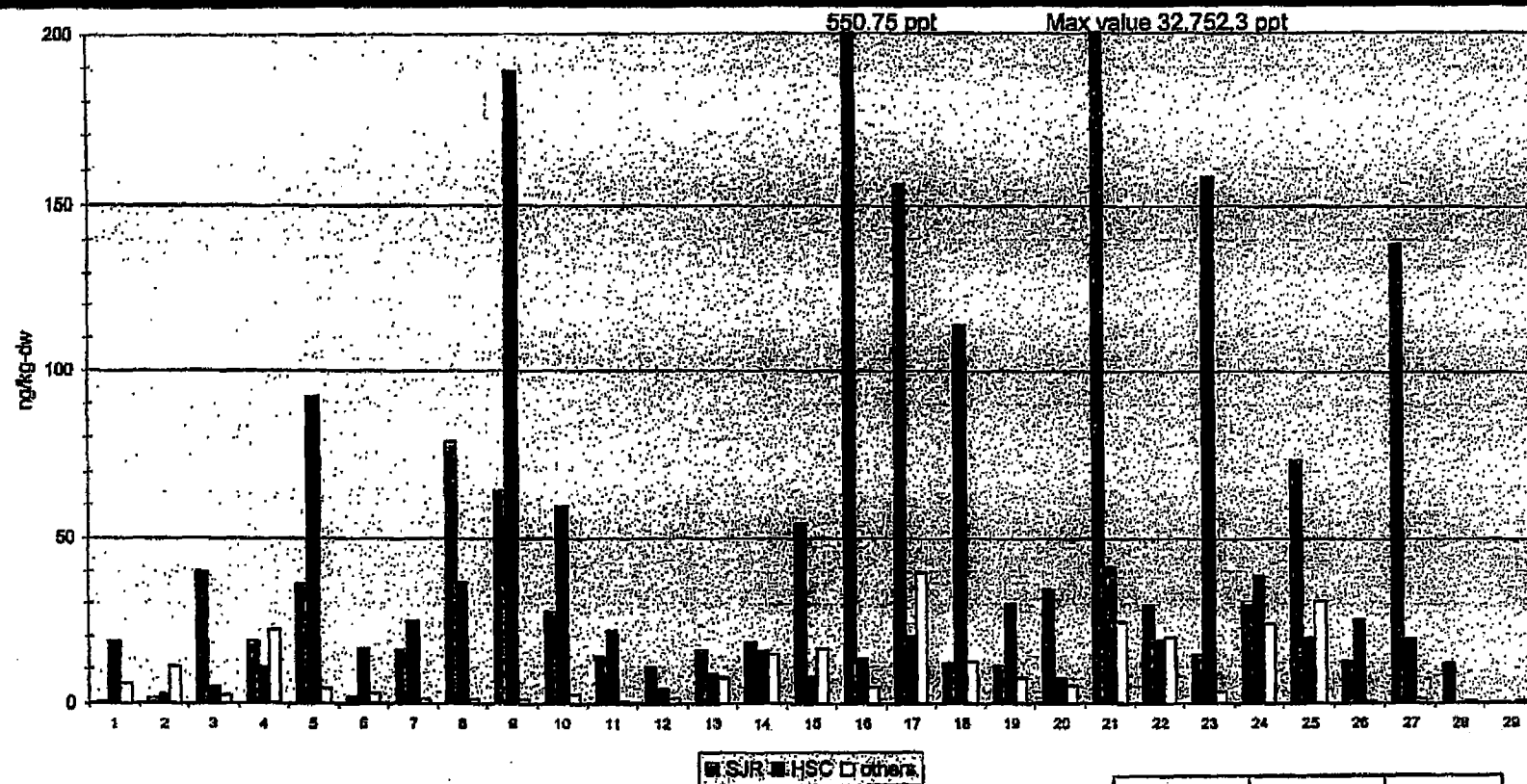
Российская Федерация: Москва (University of Moscow) Ряды Фабрики (Factory)

THURSDAY, November 18, 1960
 Club Drive No. 520-0-512104 or 520-0-742105

Department: UFG

04-01-15-0000





Max =	32752.30
90% <	77.37
85% <	48.57
81% <	39.16
75% <	30.62
50% <	15.87
25% <	5.18

USDHHS screening (50 ppt) *
USEPA screening (39 ppt) *

* From TPWD presentation slide

Sediment	averages	max
in	ppt	ppt
SJR	1,222.3	32,752.3
pit area	1,486.0	32,752.3
HSC	37.9	188.9
HSC hot area	45.6	188.9
others	9.3	39.8

- Sites 15 and 11 are the two highest sediment concentrations measured in the HSC area. Sediment concentrations were 32,752 ng/kg-dw TEQ (site 15) and 551 ng/kg-dw TEQ (site 11). Units ng/kg are equivalent to parts per trillion (ppt). Site 11 is in the sand dredging area.
- Compared to a screening value of 38 ng/kg-dw TEQ, 9 of 17 sites that exceed are in pit and sand dredging area (inside dashed yellow line on slide 3).

(Note: colored contours on slide 3 represent organic carbon normalized values, which differ from the dry weight values represented by dashed yellow line. Individual samples were normalized to individual organic carbon concentrations, dividing dry weight concentrations by %oc. Organic carbon content of HSC sediments is relatively low, averaging about 1%, so "oc-normalized" values tend to be about 100x dry weight values, i.e. $X/0.01 = 100X$, but ratio can vary by sample.)

- Third and fourth highest sites (189 and 158 ppt) are less than half the concentration at site 11. Those sites are in the main channel near Armco intake screens, and in Patrick Bayou (also a Superfund site).
- "1 ppb is the TRRP direct sediment contact value for dioxins, as well as the EPA cleanup value" (from Toxicology staff, 1/23/2009) One ppb equals 1,000 ppt. Site 11 is closer to the concentration at which contact with sediment may become hazardous than any other site except 15.

Attachment B
TCEQ TMDL Data
San Jacinto River Waste Pits

Station	Number of samples in average	TEQ concentration (ng/kg-dw)	Short description	Long description	TCEQ Segment Number	Latitude	Longitude
1	1	78.758	SJR pit site	just north and outside of Cont Term slip	1001	29.800954	-95.066934
2	1	64.512	SJR pit site	just south of 18389	1001	29.800954	-95.065098
3	1	27.653	SJR pit site	N of 10, S of 18	1001	29.800954	-95.062446
4	2	13.708	SJR pit site	main river channel NNE of pit	1001	29.800954	-95.06066
5	1	10.409	SJR pit site	main river channel NE of pit	1001	29.800954	-95.05835
6	1	10.803	SJR pit site	main river channel ENE of pit	1001	29.797711	-95.05835
7	1	14.025	SJR pit site	main river channel E of pit	1001	29.794735	-95.05901
8	1	29.465	SJR pit site	eroded bar E of pit	1001	29.794735	-95.06066
9	1	11.615	SJR pit site	eroded bar NE of pit	1001	29.797711	-95.06066
10	1	155.919	SJR pit site	eroded bar N of pit	1001	29.797711	-95.062446
11	2	550.750	SJR pit site	eroded bar NW of pit, E of Cont Term slip	1001	29.797711	-95.065098
12	1	54.255	SJR pit site	in Continental Terminals barge slip	1001	29.797711	-95.066934
13	1	12.526	SJR pit site	Old River in barge area west of SJR channel	1001	29.791573	-95.066934
14	1	34.354	SJR pit site	in mitigation area N side of IH-10	1001	29.794735	-95.065098
15	2	32752.303	SJR pit site	between 11193 and 18389, in pit	1001	29.794735	-95.062446
16	1	138.858	SJR pit site	slough S of pit, S of IH-10	1001	29.791573	-95.062446
17	1	30.677	SJR pit site	just east of 11193	1001	29.792317	-95.06066
18	1	35.960	SJR pit site	main SJ channel, about 1 km N of pit	1001	29.803744	-95.062446
19	1	18.913	SJR pit site	eroded bar NNW of pit 1 km	1001	29.803744	-95.06468
20	1	1.810	SJR pit site	eroded bar NNE of pit 1 km	1001	29.803744	-95.06066
21	1	40.003	SJR pit site	north of 1	1001	29.803744	-95.066934

EXHIBIT C

EXHIBIT C

10 DEC 1990



18001 — 1-10
CHANNELVIEW, TEXAS

REPLY TO:
2918 GREEN TEE DRIVE
PEARLAND, TEXAS 77581
713 / 485-2464

FAX 485 5550

December 7, 1990

Department of the Army
U. S. Army Corps of Engineers
444 Barracuda Ave.
P.O. Box 1229
Galveston, Texas 77553-1229

Attention: Mr. Dolan Dunn

Re: Removal of Sand on Land
Owned by H.I.T.

Dear Sir:

It was a pleasure to finally meet you on December 5, 1990 and have your Mr. B. Bennett introduce me to the representatives of the various agencies. I really was impressed with the attention given to my presentation and these interviews, every other Wednesday, approach is a great step forward.

During the aforementioned interview it was mutually agreed that probable noting could be accomplished before the first of the year upcoming, however we would like to go ahead and submit the facts and application in order that we can get on line (in line) with your staffs heavy schedule.

In going over our files we would like to reiterate our past record at this location and in order to save time and expense, advise you of past permits, applications, etc. which are:

1. In 1976 we applied and received permit application 11357 after overcoming objection of Texas Antiquities Committees. [See letter marked (B) attached]
2. In 1980 we requested permission to dredge out @ 1,100 cubic yards of sand on our property to facilitate docking barges. This was approved by agencies. [See copy of letter marked (A) from Texas Department of Water Resources attached]
3. In 1984 we received a permit to fill in an area @ 100' x 900' (Permit 32047) alongside item #1.

At this time we are desirous of obtaining a permit to dredge out our East land, dispose of sand as per permit application. This removal will be sizable in comparison with our permit issue in 1980 but feel that no impact on the environment will be the same.

Department of the Army
Mr. Dolan Dunn
Removal of Sand - H.I.T.
December 7, 1990
Page - 2 -

We have gone through our files and enclosed with this letter and application offer a copy of all, to date, permits or letters that we have received in the past which may prove of some assistance in evaluating this project.

- 4.A Harris County (Fill) Permit 32047
- 4.B U. S. Corps Permit 15472
- 4.C Port of Houston Authority 15472
- 4.D Texas Park & Wildlife

In conclusion we would like to point out the following:

Land to be excavated is on private property owned by Houston International Terminal. (State of Texas not involved)

Material excavated by dredging material will be processed through shaker screens to where boxes will be totally removed from the premises with no fall out other than original water.

Enclosed are photographs showing the area/s to be worked over.

There are no water fowl roosts nor have we seen any bird life in this area. Perhaps traffic on I-10 anyway ?

There are no vegetation in this area.

Land is near dry for the most of time (Except for storms and extreme South winds).

The Houston International Terminal has been flooded several times in past years, (not from flood tides but from heavy rains and release of water from Lake Houston) we feel that the displacement of this land would permit the equal amount of cubic yards of water to be displaced into the original track of the San Jacinto River.

GLO (not involved). The area to be worked is not on navigable waters, off San Jacinto River and not enough water to support a vessel.

Sir, upon receipt of this letter with the enclosures (Permit Application, etc.) we would appreciate a call from you or your staff if further information might be required.

Thanking you in advance for your usual prompt attention, remain with

Respects,


Capt. Jack Roberts

JR:hr

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

OMB APPROVAL NO. 0702-0036
Expires 30 June 1992

Public reporting burden for this collection of information is estimated to average 5 hours per response for the majority of cases, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Department of the Army permit program is authorized by Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act and Section 108 of the Marine Protection, Research and Sanctuaries Act. These laws require permits authorizing activities in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Information provided on this form will be used in evaluating the application for a permit. Information in this application is made a matter of public record through issuance of a public notice. Disclosure of the information requested is voluntary; however, the data requested are necessary in order to communicate with the applicant and to evaluate the permit application. If necessary information is not provided, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

1. APPLICATION NUMBER (To be assigned by Corps) 10 DEC 1990 19284		3. NAME, ADDRESS, AND TITLE OF AUTHORIZED AGENT Capt. Jack Roberts 2918 Green Tee Drive Pearland, Texas 77581 Telephone no. during business hours AC 713 485-0537 (Residence) AC 713 485-2464 (Office)	
2. NAME AND ADDRESS OF APPLICANT Houston International Terminal 18001- 110 East (Highway 73) Channelview, Texas 77530 Telephone no. during business hours AC 713 485-0537 (Residence) AC 713 485-2464 (Office)		Statement of Authorization: I hereby designate and authorize _____ to act in my behalf as my agent in the processing of this permit application and to furnish, upon request, supplemental information in support of the application.	
		SIGNATURE OF APPLICANT	DATE

4. DETAILED DESCRIPTION OF PROPOSED ACTIVITY

4a. ACTIVITY Dredged and/or dig sand from land owned by H.I.T. All dredged material will pass through screens - Boxes of approved design and transported by barge or trucks. No material will be permanently stored on adjoining land or passed back into surrounding waters.
--

4b. PURPOSE To dispose of sand commercially and to increase fleeting (parking) space for barges owned by owners and/or others.
--

4c. DISCHARGE OF DREDGED OR FILL MATERIAL Same as 4A. above.
--

5. NAMES AND ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC., WHOSE PROPERTY ADJOINS THE WATERWAY

None

6. WATERBODY AND LOCATION ON WATERBODY WHERE ACTIVITY EXISTS OR IS PROPOSED

Land is on land owned by H.I.T. is not on any navigable waterbody.
(See diagrams attached)

7. LOCATION ON LAND WHERE ACTIVITY EXISTS OR IS PROPOSED

ADDRESS: 18001 - I10 East (Highway 73)
Channelview, Texas

STREET, ROAD, ROUTE OR OTHER DESCRIPTIVE LOCATION

Harris	Texas	77530
COUNTY	STATE	ZIP CODE

LOCAL GOVERNING BODY WITH JURISDICTION OVERSITE

8. Is any portion of the activity for which authorization is sought now complete? ☐ YES ☒ NO
If answer is "yes" give reasons, month and year the activity was completed. Indicate the existing work on the drawings.

9. List all approvals or certifications and denials received from other federal, interstate, state or local agencies for any structures, construction, discharges or other activities described in this application.

ISSUING AGENCY	TYPE APPROVAL	IDENTIFICATION NO.	DATE OF APPLICATION	DATE OF APPROVAL	DATE OF DENIAL
----------------	---------------	--------------------	---------------------	------------------	----------------

None to date (See letter attached)

10. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in the application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activity or I am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

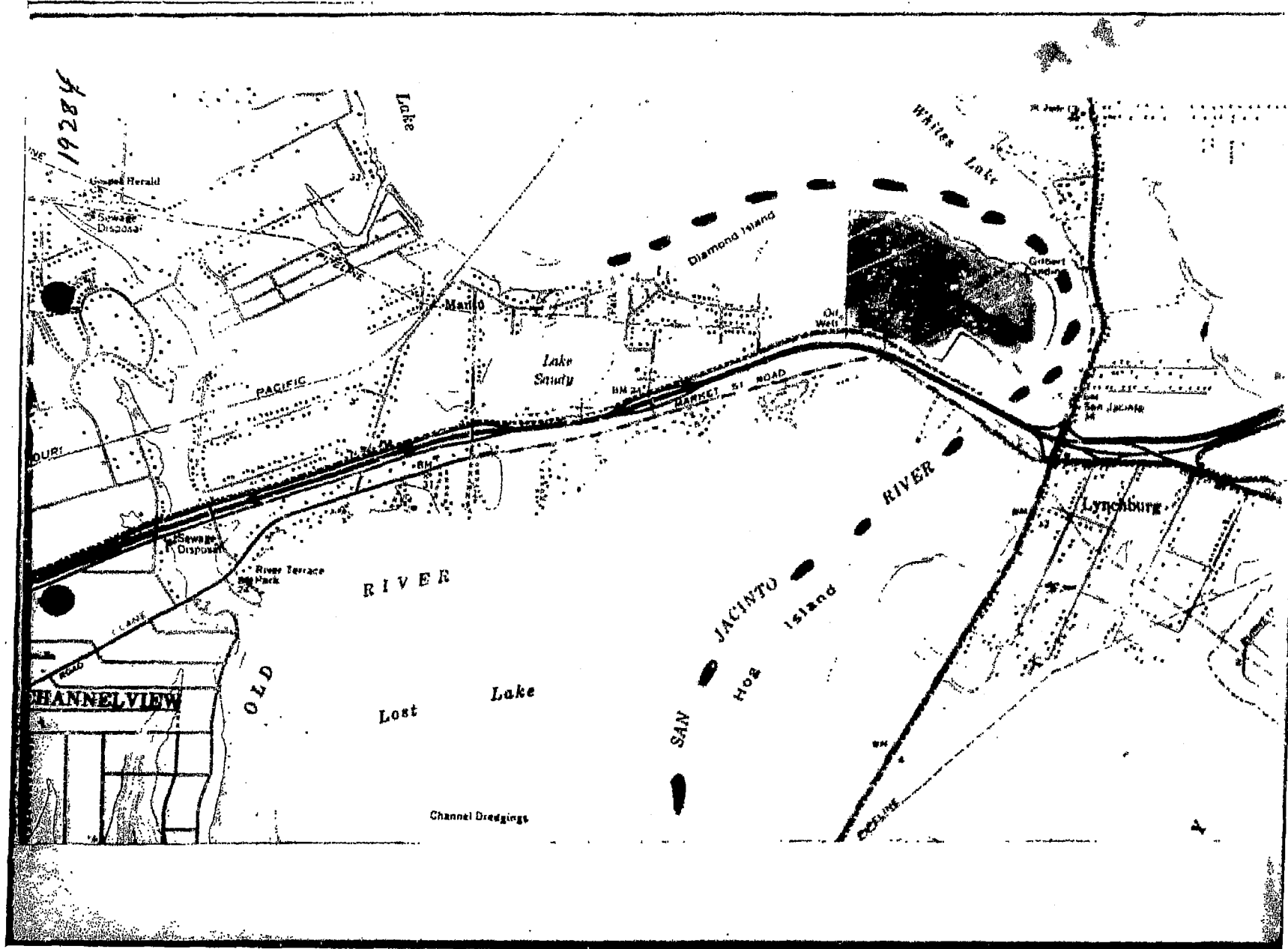
Dec. 7, 1990
DATE

SIGNATURE OF AGENT

DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 3 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of The United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.



19284

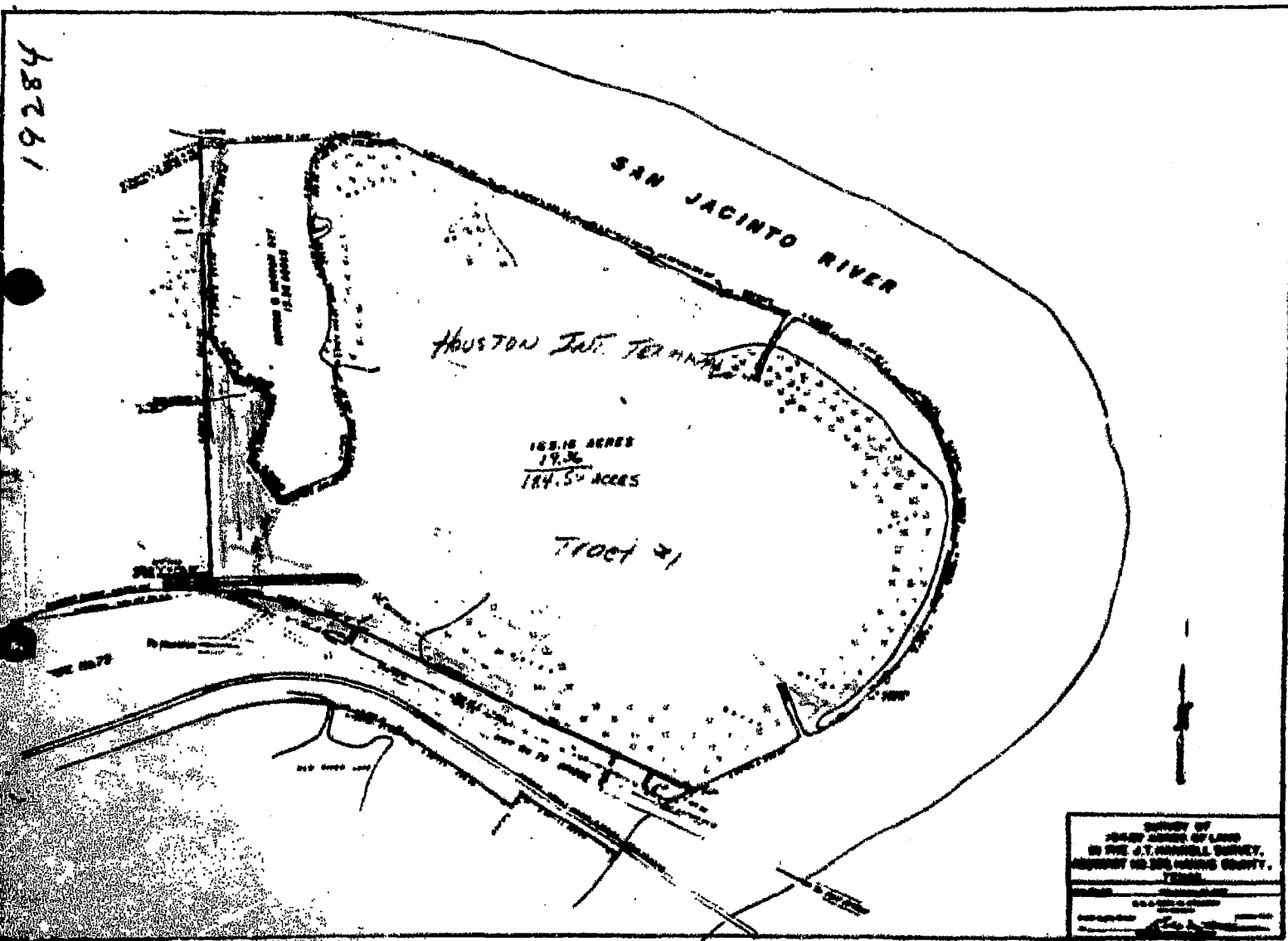


EXHIBIT D-1

EXHIBIT D-1

Big Star Barge & Boat Co., Inc.
2435 Broadway
Pearland, TX 77581
713-254-6007

RECEIVED
10 SEP 27 1112:00

September 23, 2010

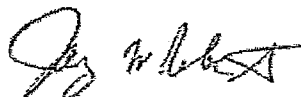
Mr. Robert Werner, Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
VIA USPS Certified Mail # 7008 1830 0000 5699 0134

Re: San Jacinto River Waste Pits Superfund Site, Channelview, TX
SSID No. 06ZQ, EPA ID No. TXN000606611
CERLA 104(e) INFORMATION REQUEST

Dear Mr. Werner,

Enclosed please find Big Star Barge & Boat Co., Inc's response, with
enclosures, to your agency's Information Request.

Sincerely yours,



Jay W. Roberts
President
Big Star Barge & Boat Co., Inc.

Enclosures



610642

ENCLOSURE 4

SAN JACINTO RIVER WASTE PITS SUPERFUND SITE

INFORMATION REQUEST

QUESTIONS

1. Identify the person(s) that provides answers to the questions below on behalf of Big Star Barge & Boat Company, Inc.

A. Jay W. Roberts.

President

Big Star Barge & Boat Company, Inc.

2435 E. BROADWAY

PEARLAND, TX 77581

B. William L. H. Morgan, Jr.

12815 Gulf Freeway

Houston, Texas 77034-4807

Telephone 281 481 5807

Email Billmorgan@msn.com

Attorney for Big Star Barge & Boat Company, Inc.

2. Please identify the organizational relationship between Houston International Terminal, Inc. and Big Star Barge & Boat Company, Inc.

Big Star Barge & Boat Company, Inc. is a corporation organized in the State of Texas on July 11, 1969, owned 100% by Stella Roberts until her death on April 21, 2001, at which time 48% was distributed to Jack Roberts, 26% to Jay W. Roberts, and 26% to Diana L. Roberts. Houston International Terminal, Inc. is a corporation organized in the State of Texas on February 16, 1982 owned 52% by Jack Roberts and 48% by Stella Roberts until her death on April 21, 2001, at which time her interest was distributed 24% to Jay W. Roberts, and 24% to Diana L. Roberts.

3. Has BSB ever participated in any planning for dredging activities in the area of the San Jacinto River, along its south bank on the north side of the I-10 Bridge in Harris County, Texas (see Enclosure 5, Aerial photo).

NO

4. Has BSB ever participated in any dredging activities in the area of the San Jacinto River, along its south bank on the north side of the I-10 Bridge in Harris County, Texas (see Enclosure 5, Aerial photo).

NO

5. If your answer to either question #3 or #4 is yes:

- A. Please provide copies of all documents in your possession that describe or contain any information that pertains to BSB's participation in planning and/or dredging operations in the above described area of the San Jacinto River.
- B. Please describe the dredging activities that BSB participated in planning for and/or was involved with sand dredging operations conducted in the above described area of the San Jacinto River. Your answer should include, but not be limited to:
- 1) The period that actual dredging activities occurred.
 - 2) The name of any third party that directed, controlled, or participated in BSB's involvement with dredging operations in the above described area of the San Jacinto River.
 - 3) The location placement of any waste dredging material, i.e., disposition of "overburden" that resulted from sand dredging activities in the above described area of the San Jacinto River.
6. If your answer to the above questions #3 and #4 is no, please explain why a Letter, dated November 20, 1998 from Houston International Terminal to Department of the Army (see Exhibit 5) identifies that, "The original permit was issued after much discussion during conferences and meeting with Parker Brothers. As you know Parker merged to form Parker LaFarge which set back our operations by at least a year. Only one (1) barge load was removed by Parker LaFarge....In late 1997 we entered into a working contract with Mega Sand (Dan & Brenda Moore) who agreed to the mitigation plan. In September 1997 dredging recommenced and work on the mitigation plan started."

Since the letter referenced above was from Houston International Terminal, Inc., said letter does not implicate that BSB participated in the comments or actions referenced therein.

7. Please identify the names of all dredging companies that you have reason to believe have, at any time, participated in the planning of, and/or participated in, dredging operations in the above described area of the San Jacinto River.

Although Big Star Barge & Boat Company, Inc. was not a party to any dredging operations in the above described area of the San Jacinto River, Big Star Barge & Boat Company, Inc. is aware only of a lease whereby Houston International Terminal, Inc. authorized MegaSand Enterprises, Inc. to dredge sand from said area.

8. Please identify the owner of record for the area in the above described area of the San Jacinto River.

Big Star Barge & Boat Company, Inc.

9. If BSB is the owner of record for the above described area of the San Jacinto River, please provide EPA with a copy of the current recorded deed that documents BSB's ownership.

STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS, THAT I, TRIUMPH INDUSTRIES, INC.,

350

TO HAVE AND TO HOLD the said premises, together with all rights, easements and appurtenances therein

146-07-0316

BY HARRIS COUNTY, TEXAS

, hereinafter called grantor, in consideration of the sum of

ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100----- DOLLARS
to said grantor in hand paid by the grantee hereinafter named, the receipt of which is hereby acknowledged, and the
further consideration of the execution and delivery by the grantee herein of his own certain promissory note of even
date herewith, in the principal sum of ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100

(\$165,000.00) DOLLARS,

payable to the order of FIRST STATE BANK & TRUST CO.
hereinafter called payee, representing funds advanced by payee to the grantor herein, at the request of and to a loan to
the grantor herein as part of the purchase price of the property herein conveyed, which note is payable on specified
terms and bears interest at the rate specified therein, and contains the usual accelerated maturity, provides for at-
torney's fees specified therein and has default clause, and in addition to the vendor's lien retained herein in favor of
payee according to payment, the grantee herein executed a deed of trust of even date with said note to WILLIAM
C. BOYD,

Trustor; have Granted, Sold and Conveyed,

and by these presents do Grant, Sell and Convey unto BIG STAR MARCO & BOAT COMPANY, INC.,

HARRIS
HARRIS
County, Texas, herein called grantee, all that certain property situate in the County
State of Texas, described as follows, to-wit:

See Exhibit "A", attached hereto and incorporated
herein by reference for all purposes

FILED
JUL 1 2 20 PM 1976
HARRIS COUNTY, TEXAS

mineral interests, royalty reservations, mineral leases
This conveyance is made subject to the following matters, to the extent same are in effect at this time: Any and all
conditions, covenants, restrictions and easements, if any, relating to the hereinabove described property, but only to the
extent that they are still in effect, shown of record in the public records of Harris County and State, and in all existing laws, reg-
ulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are
still in effect, relating to the hereinabove described property.

TO HAVE AND TO HOLD the said premises, together with all rights, easements and appurtenances therein
belonging, unto the said grantee above named, his heirs and assigns forever. And grantor does hereby bind himself, his
heirs, executors and administrators, to warrant and forever defend the title to the said property unto the said grantee
above named, his heirs and assigns, against every person whomsoever lawfully claiming, as to claim the same, or any
part thereof.

That it is expressly agreed and stipulated, that a vendor's lien is retained in favor of payee who will hold superior
title in and to the above described property, premises and improvements, and the title to the grantee will not become
absolute until the above described note, together with all renewals and extensions thereof, and all interest and other
charges thereon stipulated, are fully paid, according to the face and effect and tenor thereof, when this deed shall be-
come absolute; and it shall be the same as if a vendor's lien was retained in favor of the grantor herein and assigned by
proper assignment to payee without interest on grantor in any manner for the payment of said indebtedness.

When this deed is executed by more than one person, it shall be construed as though grantor were written grant-
ors and words in their number were changed to correspond; and pronouns of the masculine gender, wherever used
herein, shall include persons of the female sex and corporations and associations of every kind and character; and the
words "heirs, executors and administrators", when this instrument is executed by a corporation shall be construed to
mean successors and assigns; if granted by more than one person it shall be construed as though grantor were written
grantees and words in their number were changed to correspond and pronouns of the masculine gender, where used
herein as to the grantor, shall be construed to include persons of the female sex, corporations and associations of every
kind and character, and as to a corporation, the word heirs shall be construed as successors.

EXECUTED the 27th day of July, 1976.

ATTEST:
Secretary

TRIUMPH INDUSTRIES, INC.

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared

146-07-0317

HAL M. ZIMMERMAN, President of TALENTE INDUSTRIES, INC.
 subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed, and in the capacity stated.

Given under my hand and seal of office, this 22nd day of July, 1976.

STATE OF TEXAS
COUNTY OF _____

Notary Public

HABES

Costs:

Return set. The undersigned hereby, on this day personally executed

known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me
privately and apart from her husband, and having the same fully explained to her, she, the said

she signed such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this

५३ + १४३

STATE OF TEXAS
COUNTY OF

Finanz 3. 11. 1919

DEBIT. TIME

Before us, the undersigned authority, on this day personally appeared _____

with the said and personally
They stressed the same for the purpose and consideration of the said and the said

having been separated by me privately and apart from her husband, and having the same fully explained to her, and, also, told

acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this

darat

Robert P. Hall

County, Texas

General Warranty Deed With Lien in Favor of Third Party

CI

RETURN TO Big Bear Paper Co.
P.O. Box 1114 EL PASO
STREET, El Paso, California, Texas

146-07-0318

WITNESS & ATTACHED TO DEED DATED JULY 22, 1976
BETWEEN TRIUMPH INDUSTRIES AS GRANTOR AND BIG STAR ENTER & BOAT CO INC
AS GRANTEE

A Tract of land in the J. T. Bartlett Survey, Abstract No. 330, in Harris County, Texas, more particularly described as follows:

COMMENCING at a stake in the West bank of the San Jacinto River and in the North Right of way line of State Highway No. 73;

THENCE North 62 degrees 55 minutes East 1831.71 feet along the North line of said State Highway No. 73 to the beginning of a curve to the left;

THENCE following said curve to the left, having a radius of 1910 feet and a central angle of 10 degrees 25 minutes for a distance of 347.76 feet to the PLACE OF BEGINNING and the Southeast corner of the tract herein described;

THENCE continuing along said curve to the left in the North right of way line of said State Highway No. 73, said curve having a radius of 1910 feet and a central angle of 10 degrees 46 minutes for a distance of 358.91 feet to a 3/4 inch iron pipe at a fence corner marking the Southwest corner of the tract herein described;

THENCE North 0 degrees 59 minutes West 2219.00 feet to a 3/4 inch iron pipe on the South bank of the San Jacinto River from which a 12 inch Cypress marked "X" bears North 55 degrees 43 minutes West 70 feet and a 12 inch Cypress marked "X" bears South 60 degrees 40 minutes West 30 feet;

THENCE North 65 degrees 14 minutes East 96.40 feet along the Southwestern bank of the San Jacinto River to the West bank of the Horton and Horton Company sand cut;

THENCE along the West bank of said Horton and Horton Company sand cut with the following bearings:

South 10 degrees 04 minutes East 409.70 feet;
South 0 degrees 56 minutes East 547.15 feet;
South 20 degrees 16 minutes East 254.58 feet;
South 56 degrees 09 minutes East 165.68 feet;
South 15 degrees 32 minutes West 340.75 feet;
South 34 degrees 34 minutes East 242.05 feet;
North 68 degrees 47 minutes East 26.59 feet;

THENCE South 0 degrees 59 minutes East 537.60 feet to the PLACE OF BEGINNING.

7163882
Return to: Big Star Barge & Boat Co.
2318 Green Tee Drive
Pearland, Texas 77581

520-03-3167

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

9701/98 1000000 115000 00.00

THAT PARKER BROTHERS & COMPANY, INC., a Texas corporation, located in Harris County, Texas (hereinafter called "Grantor," whether one or more) for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations to Grantor in hand paid by Big Star Barge & Boat Co., Inc., whose address for notice hereunder is 2318 Green Tee, Pearland, Texas 77581 (hereinafter called "Grantee," whether one or more)

Receipt of all of which is hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto said Grantee all that certain tract or parcel of land, together with all improvements thereon, situated in the County of Harris, State of Texas, and described as follows,

All that certain property described on Exhibit "A" attached hereto and made a part hereof for all purposes.

This conveyance is made subject to (i) any and all restrictions, covenants, mineral and/or royalty reservations, covenants, maintenance or similar charges, and easements, if any, relating to the hereinabove described property, but only to the extent that they are still in force and effect, shown of record in said County, and to all zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, but only to the extent that they are still in effect, relating to the hereinabove described property; (ii) any loss or damage resulting from allegations or determinations that the transfer to Grantor was either a preferential or a fraudulent transfer under the bankruptcy or state insolvency laws.

Grantor has executed and delivered the Deed and has granted, bargained, sold and conveyed the Property, and Grantee has received and accepted this Deed and has purchased the Property, AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, EXCEPT SOLELY THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN; IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY REVOKE, RELEASE, NEGATE AND EXCLUDE ALL REPRESENTATION AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES AS TO (a) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (b) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE IMPROVEMENTS; (c) THE QUALITY OF THE LABOR OR MATERIALS INCLUDED IN THE IMPROVEMENTS; (d) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF

520-03-3100

THE PROPERTY OR WHICH AFFECT THE PROPERTY; (v) ANY CONDITIONS AT OR WHICH AFFECT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PROPOSED USE, DEVELOPMENT POTENTIAL, INGRESS, EGRESS OR OTHERWISE; (vi) THE AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION, MAKE, MODEL, COMPOSITION, AUTHENTICITY OR AMOUNT OF THE PROPERTY; (vii) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (viii) ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS BY GRANTOR WHATSOEVER, EXCEPT SOLELY THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee and Grantee's heirs, successors and assigns, forever; and it is agreed that Grantor and Grantor's heirs, successors, and assigns are hereby bound to warrant and forever defend, all and singular, the premises, unto the said Grantee and Grantee's heirs, successors and assigns, against every person who may lawfully claim or to claim the same or any part hereof, by, through, or under Grantor, but not otherwise.

Taxes for the current year have been prorated as of the date hereof, and Grantee assumes and agrees to pay the same.

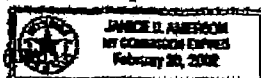
EXECUTED as of the 23rd day of July, 1998.

PARKER BROTHERS & COMPANY, INC.

By: [Signature]
Robert E. Ferris, President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 23rd day of April, 1998 by Robert R. Ferris, President of PARKER BROTHERS & CO., INC., a Texas corporation, for and on behalf of said Texas corporation.



[Signature]
Notary Public, State of Texas

My commission expires:

02-28-02

Notary Name Printed or Typed

Janice D. Amerson

LAND DATA SURVEYS, INC.

DON DENSON

Registered Professional Land Surveyor

520-63-3109



EXHIBIT "A"

File No. 98-023A3

May 22, 1998

METES AND BOUNDS DESCRIPTION
0.7420 ACRES

A tract of land containing 0.7420 acres being part of and out of the residue of an original called 80 Acre Tract as cited in Volume 2821, Page 313 of the Harris County Deed Records (HCDR), in the J.T. Harrell Survey, Abstract No. 330, in Harris County, Texas; said 0.7420 acres being more particularly described by metes and bounds as follows:

COMMENCING at the intersection of the northerly right-of-way line of Interstate Highway 10 with the westerly line of SAN JACINTO RIVER ESTATES, a subdivision of land according to the map or plat thereof recorded in Volume 16, Page 9 of the Harris County Map Records, from which a found 1-inch iron pipe bears witness at N 00 deg. 38' 00" W, a distance of 1.77 feet (said pipe being as shown on plat of survey of the herein described tract prepared September 15, 1954 by R.M. Atkinson, PE);

THENCE, N 00 deg. 38' 00" W, along the westerly line of said called 80 Acre Tract as described in Volume 2821, Page 313, HCDR, and as indicated on said plat by Atkinson, at a distance of 640.00 feet pass a 5/8-inch iron rod set for reference, and continuing for a total distance of 662.55 feet to the water's edge of the southerly bank of the San Jacinto River;

THENCE, continuing EASTERLY along and with the meanders of the water's edge of the southerly bank of the San Jacinto River, for an approximate total distance of 4,474 feet to the point of intersection of the water's edge of the southerly bank of the San Jacinto River with the east line of said called 80 Acre Tract;

THENCE, S 00 deg. 38' 00" E, along the east line of said called 80 Acre Tract, at 45.73 feet, more or less, pass a 5/8-inch iron rod set for reference, and continuing for a total distance of 141.12 feet to the POINT OF BEGINNING;

THENCE, S 89 deg. 22' 00" W, for a distance of 100.00 feet to a point for corner;

THENCE, S 00 deg. 38' 00" E, for a distance of 323.20 feet to a point for corner;

THENCE, N 89 deg. 22' 00" E, for a distance of 100.00 feet to a point for corner, on the east line of the aforesaid called 80 Acre Tract;

P.O. Box 850827 - Houston, Texas 77289-0827
Office: (713) 643-8585 • Fax: (281) 332-0950

Page Two

520-63-3173

THENCE, N 00 deg. 35' 00" W, along the easterly line of said 80 Aero Tract, for a distance of 323.20 feet to the POINT OF BEGINNING, of a tract containing 0.7420 acre of land.



[Signature]

Date 5-22-98

Don Denson, RPLS # 2058, STATE OF TEXAS

FILED FOR RECORD
8:00 AM

JUL 27 1998

[Signature]
County Clerk, Harris County, Texas

520-03-3171

CALLED 33' WIDE
 HUMBLE PIPELINE R.O.W.
 PER AT&T'S SUB-FILM
 NOTATION DATED
 3-17-44

CALLED 1-1/2 ACRE TR.
 PER VOL. 3900, PG. 242.
 H. C. D. R. MARINA REALTY
 CORP., 12-30-88.

0025-485
10081-1
FACEDOWN
20110114
MOMN

2017-2018
5,000,000

10-11-68

AREA = 0.7420 AC.

484.41'
500°30'00"E

4 3.00.22.58H

6-1-
FIREWALL (BETWEEN)
F77-CCN-COL-TAF
OF ACTUAL TANKS

323.20'
5 00° 38' 00" E

M. 00.22.68S
 100.001

2218.30'
00°38'00"E

AT THE TIME OF ASSASSINATION, THIS
EVIDENCE WAS FOUND TO BE IMPORTANT
FOR THE FBI PHOTOGRAPHIC LABORATORY
BECAUSE OF ALLEGEDLY, CARBON OR
PHOTOCOPY, REPRODUCED PAPER, ETC.

• 2011年12月15日，在《中国好声音》第一季总决赛中，李健以一首《贝加尔湖畔》夺得冠军。

JUL 27 1998

County Clerk
Harris County Texas



6654979

A 87052 cr 14

RECORDED 99567 4 350679 15 B PD

PAGE

165-86-0015

GENERAL WARRANTY DEEDTHE STATE OF TEXAS
COUNTY OF HARRIS§
§ KNOW ALL MEN BY THESE PRESENT:
§

9
A

THAT M. MICHAEL GORDON (a single man who has never been married) and FRANK F. SPATA (who is not joined by his wife herein for the reason that the real property hereinafter conveyed does not constitute or form any part of their residence or business homestead) both of the County of Harris, State of Texas, herein called Grantors, for and in consideration of the sum of TEN (\$10.00) DOLLARS to them in hand paid by BIG STAR BARGE & BOAT CO., INC., a Texas Corporation, herein called Grantee, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed:

HAVE GRANTED, SOLD and CONVEYED and do by these presents GRANT, SELL and CONVEY unto the Grantee the surface estate only in and to that certain tract of land containing 190.8 acres, more or less, out of the Josiah T. Harrell Survey, Abstract No. 330, Harris County, Texas, described as Tract Number One (1) in deed from Edward Shields, et ux, to M. Michael Gordon and Frank F. Spata, dated November 15, 1943 and recorded in Volume 1297, Page 16 of the Deed Records of Harris County, Texas, SAVE AND EXCEPT the following:

- (a) 12.84 acres conveyed to the State of Texas for road purposes by deed, dated September 15, 1947, and recorded in Volume 1662, Page 489 of the Deed Records of Harris County, Texas; and
- (b) 7.89 acres conveyed to Marina Realty Corporation by deed, dated December 30, 1959 and recorded in Volume 3900, Page 246 of the Deed Records of Harris County, Texas; and
- (c) 20 acres conveyed to Virgill G. McGinnes, Trustee, by deed, dated August 12, 1965 and recorded in Volume 6037, Page 352 of the Deed Records of Harris County, Texas.

TO HAVE AND TO HOLD the above described premises together with all and singular the rights and appurtenances therein in anywise

165-86-0016

belonging, unto the Grantee, its successors and assigns forever; and Grantors do hereby bind themselves, their heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the said premises unto the Grantee, its successors and assigns, against every person whosoever lawfully claiming or to claim the same or any part thereof.

This Conveyance is made and accepted subject to any and all restrictions, easements, reservations and other conditions, if any, relating to the above described real property, to the extent, and only to the extent, that the same may still be in force and effect, shown of record in the office of the County Clerk of Harris County, Texas, and more particularly to the following:

- (a) All visible and apparent easements not of record in the Office of the County Clerk of Harris County, Texas.
- (b) Unobstructed easement five (5) feet in width along the west property line of the property, together with an unobstructed aerial easement adjoining thereto ten (10) feet wide from a plane twenty (20) feet above the ground upward, granted to Houston Lighting and Power Company by unrecorded instrument, dated May 11, 1960, said easement being further located by Sketch No. AH-13867-H attached thereto.
- (c) Easement for ingress and egress to San Jacinto River, over and across that certain 19.36 acre body of water known as Horton and Horton Cut, together with the right and privilege to construct and maintain docks or wharves, granted to Marina Realty Corporation as described in unrecorded instrument, dated November _____, 1967.
- (d) Pipeline easement granted to Humble Pipe Line Company by instrument recorded in Volume 934, Page 485 of the Deed Records of Harris County, Texas, as defined and limited to a fifty (50) foot strip by instrument recorded in Volume 6050, Page 3 and in Volume 6179, Page 521, both of the Deed Records of Harris County, Texas.
- (e) Easement for flare vent stack and elevated walkway granted to Humble Pipe Line Company by unrecorded instrument, dated August 29, 1968, said easement being located within the above described fifty (50) foot strip and further located on Humble Pipe Line Company Survey No. 1480, Sketch B-4955, dated August 7, 1968.
- (f) Oil, Gas and Mineral Lease, dated October 5, 1979, by and between M. Michael Gordon and Frank F. Spata, as Lessors and Energetics, Inc., as Lessee, for a primary term of three (3) years with waiver of surface rights contained therein.

165-86-0017

- (B) Unrecorded lease agreement between Grantors herein, as Lessors, and Sterling & Sterling/Advertising, Inc., as Lessee, covering present placement of billboard or advertising sign; and which lease terminates on February 28, 1981.

EXECUTED at Houston, Texas, this 27 day of AUGUST, 1980 A.D.


M. MICHAEL GORDON


FRANK F. SPATA


THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared M. MICHAEL GORDON, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 27 day of August, 1980.




Notary Public in and for
Harris County, Texas.

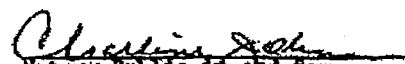
THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared FRANK F. SPATA, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 27 day of August, 1980.




Notary Public in and for
Harris County, Texas.

Return to:
Big Star Barge
2918 Cherry Ave
Pearland, Texas 77581

165-86-0018

STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in
the Public Records on the date and at the time stamped
below by me and was duly RECEIVED by the Official
Public Records of Real Property of Harris County, Texas on

AUG 27 1980



John L. Williams
COUNTY CLERK,
HARRIS COUNTY, TEXAS

FILED
AUG 27 3 42 PM 1980
John L. Williams
COUNTY CLERK
HARRIS COUNTY, TEXAS

EXHIBIT D-2

EXHIBIT D-2

**Houston International Terminal, Inc.
2435 Broadway
Pearland, TX 77581
713-254-6007**

RECEIVED

10 SEP 27 AM 12:00

SEP 27 2010
713-254-6007

September 23, 2010

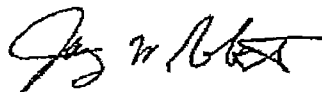
Mr. Robert Werner, Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
VIA USPS Certified Mail # 7008 1830 0000 5699 0127

Re: San Jacinto River Waste Pits Superfund Site, Channelview, TX
SSID No. 06ZQ, EPA ID No. TXN000606611
CERLA 104(e) INFORMATION REQUEST

Dear Mr. Werner,

Enclosed please find Houston International Terminal Inc.'s response,
with enclosures, to your agency's Information Request.

Sincerely yours,



Jay W. Roberts
President
Houston International Terminal, Inc.

Enclosures



610644

ENCLOSURE 4

SAN JACINTO RIVER WASTE PITS SUPERFUND SITE

INFORMATION REQUEST

QUESTIONS

1. Identify the person(s) that provides answers to the questions below on behalf of Houston International Terminal, Inc.

A. Jay W. Roberts

President

Houston International Terminal, Inc.

2435 E. BROADWAY

PEARLAND, TX 77581

B. William L. H. Morgan, Jr.

12815 Gulf Freeway

Houston, Texas 77034-4807

Telephone 281 481 5807

Email Billmorgan@msn.com

Attorney for Houston International Terminal, Inc.

2. Please identify the organizational relationship between Houston International Terminal, Inc. and Big Star Barge & Boat Company, Inc.

Big Star Barge & Boat Company, Inc. is a corporation organized in the State of Texas on July 11, 1969, owned 100% by Stella Roberts until her death on April 21, 2001, at which time 48% was distributed to Jack Roberts, 26% to Jay W. Roberts, and 26% to Diana L. Roberts. Houston International Terminal, Inc. is a corporation organized in the State of Texas on February 16, 1982 owned 52% by Jack Roberts and 48% by Stella Roberts until her death on April 21, 2001, at which time her interest was distributed 24% to Jay W. Roberts, and 24% to Diana L. Roberts.

3. Has HIT ever participated in any planning for dredging activities in the area of the San Jacinto River, along its south bank on the north side of the I-10 Bridge in Harris County, Texas (see Enclosure 5, Aerial photo).

HIT submitted an application with the Corps of Engineers for a dredging permit for the area and entered into a lease with MegaSand Enterprises, Inc. for MegaSand Enterprises, Inc. to dredge sand from the area.

4. Has HIT ever participated in any dredging activities in the area of the San Jacinto River, along its south bank on the north side of the I-10 Bridge in Harris County, Texas (see Enclosure 5, Aerial photo).

HIT entered into a lease with MegaSand Enterprises, Inc. for MegaSand Enterprises, Inc. to dredge sand from the area.

5. If your answer to either question #3 or #4 is yes:

- A. Please provide copies of all documents in your possession that describe or contain any information that pertains to HIT's participation in planning and/or dredging operations in the above described area of the San Jacinto River.

The dredging permit and lease with MegaSand Enterprises, Inc. is attached.

- B. Please describe the dredging activities that HIT participated in planning for and/or was involved with sand dredging operations conducted in the above described area of the San Jacinto River. Your answer should include, but not be limited to:

- 1) The period that actual dredging activities occurred.

During the term of the above described lease with MegaSand Enterprises, Inc.

- 2) The name of any third party that directed, controlled, or participated in HIT's involvement with dredging operations in the above described area of the San Jacinto River.

MegaSand Enterprises, Inc.

- 3) The location placement of any waste dredging material, i.e., disposition of "overburden" that resulted from sand dredging activities in the above described area of the San Jacinto River.

It is the understanding of HIT that a small part of the Overburden may have been place in the Corps of Engineers "mitigation" area, however, since Megasand Enterprises, Inc. was conducting the dredging operations HIT personnel aren't aware of all of the specifics of said operations.

6. If your answer to the above questions #3 and #4 is no, please explain why a Letter, dated November 20, 1998 from Houston International Terminal to Department of the Army (see Exhibit 5) identifies that, "The original permit was issued after much discussion during conferences and meeting with Parker Brothers. As you know Parker merged to form Parker LaFarge which set back our operations by at least a year. Only one (1) barge load was removed by Parker LaFarge....In late 1997 we entered into a working contract with Mega Sand (Dan & Brenda Moore) who agreed to the mitigation plan. In September 1997 dredging recommenced and work on the mitigation plan started."

NA.

7. Please identify the names of all dredging companies that you have reason to believe have, at any time, participated in the planning of, and/or participated in, dredging operations in the above described area of the San Jacinto River.

Houston International Terminal, Inc. was not a party to any dredging operations in the above described area of the San Jacinto River, Houston International Terminal, Inc. is

aware only of a lease whereby Houston International Terminal, Inc. authorized MegaSand Enterprises, Inc. to dredge sand from said area.

8. Please identify the owner of record for the area in the above described area of the San Jacinto River.

Big Star Barge & Boat Company, Inc.

9. If HIT is the owner of record for the above described area of the San Jacinto River, please provide EPA with a copy of the current recorded deed that documents HIT's ownership.

NA

DEPARTMENT OF THE ARMY PERMIT

Permittee Houston International Terminal

Permit No. 18284

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To dredge sand for commercial sale and to provide a barge berthing area, and to create a fenced smooth cordgrass marsh area for mitigation; in accordance with the attached plans in six sheets, sheet one of which is entitled "HOUSTON INTERNATIONAL TERMINALS."

Project Location: San Jacinto River, along the south bank, north of the Interstate 10 bridge in Channelview, Harris County, Texas.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 1995. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

ENG FORM 1721, Nov 80

EDITION OF SEP 82 IS OBSOLETE.

(33 CFR 325 (Appendix A))

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Further Information:

1. **Congressional Authorization:** You have been authorized to undertake the activity described above pursuant to:

☒ Section 10 of the Rivers and Harbors Act of 1889 (43 U.S.C. 403).

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. **Limits of this authorization.**

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural events.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

a. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 329.7 or enforcement procedures such as those contained in 33 CFR 329.4 and 329.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 329.170) accomplish the corrective measure by contract or otherwise and bill you for the cost.

6. Extensions: General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as Agent, indicates that you accept and agree to comply with the terms and conditions of this permit.


(AGENT SIGN)

HOUSTON INTERNATIONAL TERMINAL

11 May 1992
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



(DISTRICT ENGINEER)

BRUCE M. BENNETT, Acting Chief,
North Evaluation Section
FOR COLONEL BRINK P. MILLER

21 MAY 1992

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated exhibits associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEE SIGN)

(DATE)

**LEASE AGREEMENT FOR MINING AND DREDGING
OF SAND**

This agreement is made by MegaSand Enterprises, Inc.; (MS) herein called Lessee and HOUSTON INTERNATIONAL TERMINAL (HIT), herein called Lessor, whether one or more. This lease is to be for excavating, dredging, or mining of sand, dirt and gravel, and does not affect the mineral rights of the land.

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Lessor does hereby demise and lease and Lessee does hereby lease from Lessor property located at HIT terminal on the San Jacinto River, North of the I-10 East bridge at the San Jacinto River in East Harris County, Texas, herein called and designated as "Leased Property" for mining, dredging, removing or selling commercially recoverable sand and associated products.

TERMS

The term of this lease shall commence immediately upon execution of this agreement and shall continue until the current Corps Of Engineers Permit number 19824 issued may 11, 1992 scheduled to terminate November 30, 1998, and not less than one (1) extension, renewal or newly acquired permit shall expire. Upon termination of the current permit to dredge, HIT shall be responsible for extending the permit for a minimum period of three (3) years. If HIT is unable to extend the permit, this agreement will terminate upon expiration of the permit.

Notice of intent to vacate or intent not to renew the lease must be given on or before the 30 days prior to expiration of any permit to dredge issued by the Corps of Engineers, or applicable authority.

Lessee agrees to abide by all Federal, state and Local laws so far as the operation is concerned.

This lease cannot be reassigned to any individual, company, corporation or partnership without the express written permission of Lessor.

Lessee agrees to pay the agreed price for all sand, dirt gravel or other products taken from the land by the 20th of the following month. Sand shall be measured and paid by either by cubic yards, or by the ton, whichever is applicable.

Lessee agrees to pay \$.65 (65 cents) per cubic yard for sand recovered and measured for resale, or fifty cents (\$.50) per ton for sand recovered for resale.

Lessor agrees that for a the period of the lease that it will not lease any part of this property for the excavation, mining or dredging of sand except for the Lessee named in this contract.

Possession of the Leased Property shall be delivered to Lessee on the commencement date unless possession is delayed due to construction or repairs in which event Lessor shall not be liable to Lessee for such delay, and this Lease shall remain in effect subject to the following terms:

- (a) All payments shall be abated on a daily basis during such delay, and
- (b) should the delay exceed 3 days after the commencement date, Lessee may terminate this Lease by giving written notice to Lessor of such termination and Lessor shall immediately refund to Lessee any deposits and rentals paid and neither party shall thereafter have any obligations to the other pursuant to this Lease.

Minor maintenance or repairs to be performed on commencement date shall not prevent delivery of possession to Tenant.

Lessee agrees that any breach of any part of this contract constitutes loss of good faith and automatically and immediately terminates the total contract.

Should Lessee pay with a check and the check is returned by his/her bank because of insufficient funds, or because the account has been closed, or any other reason that is the fault or within the control of Lessee, a penalty of twenty-five (\$25.00) dollars shall be assessed for the returned check and loss of use of the funds for the period that the check has been outstanding. If one check is returned for any of the above reasons, then Lessee may be required to pay from that day forward for the remainder of the lease term with cash, or certified funds (certified check, or money order).

HTT hereby covenants and agrees to provide an area for the installation and maintenance of a cyclone wash sand and cement stabilized sand plant with electric utilities provided on site for the operation which shall be a minimum of 15,000 square feet in an area of approximately 300 feet by 500 feet. HTT agrees to provide unimpeded access and easement(s) over its property for the ingress and egress of MS vehicular traffic and all traffic to support the operation.

Lessee agrees to release Lessor from any and all liabilities arising from any dispute wherein the handling use or sale of sand is concerned including any and all personal injuries and suits.

Lessor and, or its agent shall have the right at all reasonable times during the term of this lease with reasonable notice to enter the leased property for the purpose of inspecting them to determine if the terms of this lease are being kept.

Texas law is to apply and any action is to be brought in the Courts of Harris County, Texas, or the nearest Federal Courts thereto.

WARRANTIES

HIT warrants that the property covered by this agreement and the Corps of Engineers Permit is owned and controlled by HIT and will indemnify and hold MS harmless from and in any action covering the property, its ownership, control, or use consistent with the terms and conditions contained herein.

HIT warrants the Corps of Engineers Permit is valid, existing and current as of the date of signing of this agreement and that no other permits or authorizations are needed, necessary or required by any of the federal, state or local governmental body or agency for MS to conduct its operations on the leased property. Should any other permits or authorizations be needed, necessary, or be required by any of the federal, state or local governmental body or agency, HIT shall take whatever actions are necessary to acquire such permit or authority and will indemnify and hold harmless MS from all adverse actions concerning the permits or authorizations.

MS shall operate within the parameters and conditions of any permit or authorization and shall indemnify and hold HIT harmless for its failure to operate within such permit or authorization.

Any property left in or about the property by Lessee after the expiration of the lease, abandoning, or vacating the property without notice to Lessor, shall be considered as abandoned and may be disposed of as Lessor sees fit, without recourse by Lessee. All property placed on the property is subject to a lien in the favor of Lessor to secure payment of all sums due and owing hereunder.

HIT hereby covenants and agrees to provide dockage and docking facilities for an area for the safe and unimpeded loading and unloading of sand barges and marine uses to support the operation.

Lessee shall during the term of this lease at its own expense maintain the leased property and the road into and out of the property in as safe and good condition as they were in at the date of this lease, save normal wear and tear, unless said road, or access is used by HIT, its agents, other tenants or assigns, in which case maintenance of the road shall be the responsibility of HIT, its other tenants, agents or assigns.

Should Lessor decide to sell the leased property, Lessee shall be given first right of refusal to purchase the property at a price determined by the then remaining sand reserves, or the price offered by any bona fide purchaser.

Lessor may display, or cause to be displayed on the property a real estate for sale or for lease sign, or other type notice that is intended to give inform the passing public that the property is for sale. Said notice shall state that it is by appointment only and give a phone number whereby the sales agent, or owner may be reached, so as to not inconvenience the Lessee.

Should Lessee be in default in payment of any rents due, in the prompt and full performance of any provision of this lease, or, if the leasehold interest of Lessee be levied on or attached by process of law, or if Lessee makes an assignment for the benefit of creditors, or if Lessee abandons the property, then and in any such event, Lessor may if he/she so elects, either terminate this lease, or without terminating this lease, terminate Lessee's right to possession of the leased property. Recovery of the property shall not relieve the Lessee of any obligations hereunder. All properties on the leased property shall be subject to a lien in favor of Lessor for payment of all sums due and owing.

INDEMNITIES

MS shall operate within the parameters and conditions of any permit or authorization and shall indemnify and hold HIT harmless for its failure to operate within such permit or authorization.

Lessee agrees to indemnify and hold Lessor harmless and free from any and all liability for injury or death of any person, or damage to property arising from use or occupancy of the leased property.

***** It is understood and agreed to by both parties of this lease agreement that a mitigation plan has been submitted to the US Corps of Engineers and Lessee has a copy of that plan and will assist in fulfilling such plan as operation permits.

ATTORNEY'S FEES

Should Lessor prevail in any legal action brought hereunder, Lessor shall be entitled to all costs of the action, including reasonable attorney's fees.

WAIVER

No failure to enforce any term or condition shall be considered a waiver of Lessor's right to enforce the terms or conditions at some later date. Acceptance of less than full rent shall not be considered a waiver of full rent due and owing.

Notices required to be given shall be effective if given in writing at 18001 Interstate 10 East, Channelview, TX 77530, addressed to Lessor, or at 11210 Saffia Road Crosby, TX 77532 addressed to Lessee, or at any other address as may be designated in writing by either party, certified mail, return receipt requested.

THIS IS A LEGAL AND BINDING CONTRACT. READ IT CAREFULLY! You have the right to have it read by an attorney of your choice at your expense if you do not understand your rights and obligations hereunder.

Three sets have been signed as originals with an effective date of the latest date shown by the signatures below.

LESSOR

HOUSTON INTERNATIONAL TERMINAL, INC.

by: Captain Jack Roberts, Pres.

Date

LESSEE

MegaSand Enterprises, Inc.

by: Brenda Moore, Pres.

Date

ATTORNEY'S FEES

Should Lessor prevail in any legal action brought hereunder, Lessor shall be entitled to all costs of the action, including reasonable attorney's fees.

WAIVER

No failure to enforce any term or condition shall be considered a waiver of Lessor's right to enforce the terms or conditions at some later date. Acceptance of less than full rent shall not be considered a waiver of full rent due and owing.

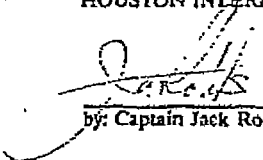
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Three sets have been signed as originals with an effective date of the latest date shown by the signatures below.

LESSOR

HOUSTON INTERNATIONAL TERMINAL, INC.


by: Captain Jack Roberts, Pres.

24 Jan 87
Date

LESSEE

MegaSand Enterprises, Inc.

by: Brenda Moore, Pres.

Date

EXHIBIT E

EXHIBIT E

After recording, return to:

San Jacinto River Fleet, L.L.C.
717 Lakeside
Channelview, Texas 77530

Special Warranty Deed

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: August 11, 2011

Grantor: Big Star Barge & Boat Company, Inc.,
a Texas corporation, also known as Big Star Barge & Boat Co., Inc., and also known as Big Star Barge & Boat Co., Inc., a Texas corporation;
and, to the extent it has any interest in and to the hereinbelow described property,
Houston International Terminal, Inc. a Texas corporation

Grantor's Mailing Address: 2425 Broadway St.,
Pearland, Texas 77581-6407
Brazoria County

Grantee: San Jacinto River Fleet, L.L.C.,
a Texas limited liability company

Grantee's Mailing Address: 717 Lakeside
Channelview, Texas 77530
Harris County

Lender: The Frost National Bank

Lender's Mailing Address: 100 W. Houston Street
San Antonio, Texas 78205
Bexar County

Consideration: Cash and a note of even date executed by Grantee and payable to the order of Lender in the principal amount of Six Hundred Sixteen Thousand, Two Hundred Fifty and No/100 DOLLARS (\$616,250.00) (said note being hereinafter referred to as the "Note"). The Note is secured by a first and superior vendor's lien and superior title

retained in this deed in favor of the Lender and by a first-lien deed of trust of even date from Grantee to Jimmy R. Locke, trustee.

Property (including any improvements):

Field notes describing a total of 21.462 acres of land out of the J.T. Harrell Survey, Abstract 330, being 0.742 acre tract out of a called 80 acre tract described in Volume 2821, Page 313 and the residue of a called 190.8 acre tract described in Volume 1297, Page 16 of the Deed Records of Harris County, Texas, November 15, 1943, being 190.8 acres save and except (a) 12.84 acres described in Volume 1662, Page 489; (b) 7.89 acres described in Volume 3900, Page 246; (c) 20.0 acres described in Volume 6037, Page 352, leaving a residue of 150.07 acres as described in 1943. Due to subsidence and other forces, the residue of this tract as surveyed in May 2011 is a total of 20.72 acres (described as tracts: Residue Areas One, Two, Three, Four and Five) which combined with the 0.742 acres yields a total acreage of 21.462, and being more particularly described by metes and bounds on Exhibit "A" attached hereto.

Reservations and Exceptions to and from Conveyance and Warranty: (1) The vendor's lien included herein and Deed of Trust lien under the above indicated Deed of Trust associated with this transaction; and, (2) the reservations and exceptions indicated and described on Exhibit "B" attached hereto; and, (3):

GRANTEE IS TAKING THE PROPERTY IN AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE CONSIDERATION WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION.

GRANTEE RELEASES GRANTOR FROM LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY (1) UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, AND THE TEXAS WATER CODE; OR (2) ARISING AS THE RESULT OF THEORIES OF PRODUCT LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE OF THE PURCHASE CONTRACT THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. THIS RELEASE APPLIES EVEN WHEN THE ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY RESULT FROM GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVE.

Grantor, for the Consideration and subject to the Reservations and Exceptions to and from Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and successors, and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors,

and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

Lender at Grantee's requests, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the Note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of the Lender and are transferred to the Lender without recourse against Grantor.

When the context requires, singular nouns and pronouns include the plural.

Big Star Barge & Boat Company, Inc.,
a Texas corporation

By: Jay W. Roberts
Jay W. Roberts, President

Houston International Terminal, Inc.
a Texas corporation

By: Jay W. Roberts
Jay W. Roberts, President

Grantee accepts the deed and consents to its form and substance. Grantee acknowledges that the terms of the deed conform with Grantee's intent and that they will control in the event of any conflict with the contract Grantee signed regarding the Property described in the deed. Grantee agrees to the obligations imposed on Grantee by the terms of the deed

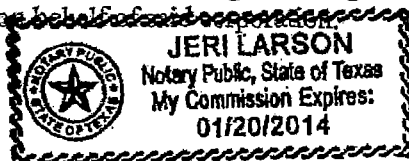
San Jacinto River Fleet, L.L.C.,
a Texas limited liability company

By: William E. Threft Jr.
Printed name: William E. THREFT JR
Title: Manager

(Acknowledgments)

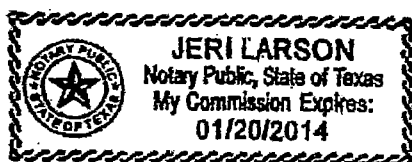
STATE OF TEXAS §
COUNTY OF BRAZORIA §

This instrument was acknowledged before me on the 11th day of August, 2011, by Jay W. Roberts, as President of Big Star Barge & Boat Company, Inc., A Texas corporation, in the name of and on behalf of said corporation.



Jeri Larson
Notary Public, State of Texas

This instrument was acknowledged before me on the 11th day of August, 2011, by Jay W. Roberts, as President of Houston International Terminal, Inc., A Texas corporation, in the name of and on behalf of said corporation.



Jeri Larson
Notary Public, State of Texas

This instrument was acknowledged before me on the 11th day of August, 2011, by Earl
Thrift, Jr., as Manager of San Jacinto River Fleet, L.L.C., A Texas
limited liability company, in the name of and on behalf of said limited liability company.

Jeri Larson
Notary Public, State of Texas



Prepared in the law office of:
William L. H. Morgan, Jr.
12815 Gulf Freeway
Houston, Texas 77034
281-481-5807

EXHIBIT A
TO THE SPECIAL WARRANTY DEED
FROM
BIG STAR BARGE & BOAT COMPANY, INC.
TO SAN JACINTO RIVER FLEET, LLC

STATE OF TEXAS §

COUNTY OF HARRIS §

Field notes describing a total of 21.462 acres of land out of the J. T. Harrell Survey, Abstract 330, being 0.742 acre tract out of a called 80 acre tract described in Volume 2821, Page 313 and the residue of a called 190.8 acre tract described in Volume 1297, Page 16 of the Deed Records of Harris County, Texas, November 15, 1943, being 190.8 acres save and except (a) 12.84 acres described in Volume 1662, Page 489; (b) 7.89 acres described in Volume 3900, Page 246; (c) 20.0 acres described in Volume 6037, Page 352, leaving a residue of 150.07 acres as described in 1943. Due to subsidence and other forces, the residue of this tract as surveyed in May 2011 is a total of 20.72 acres (described as tracts: Residue Areas One, Two, Three, Four and Five) which combined with the 0.742 acres yields a total acreage of 21.462.

All bearings, distances, and acreages are grid and are referenced to the State Plane Coordinate System, NAD 83, Texas South Central Zone, U. S. survey feet. The mapping angle is +01°55'33" and the combined scale factor is 0.999899660. On shore boundaries, points were placed on the line of mean high water and lines connecting them are meander lines. The gauge at Lynchburg (NOAA 87707331) was utilized as the primary gauge for this project.

RESIDUE AREA ONE plus 0.742 ACRES

BEGINNING at a 5/8" iron rod found at the southeast corner of the said 80 acre tract described in Volume 2821, Page 313, also being the southwest corner of the herein described tract of land and being the southwest corner of the tract described as Residue One. This iron rod is in the north right-of-way of Interstate Highway 10 as established in the said (a) 12.84 acres described in Volume 1662, Page 489 and has a state plane coordinate value of N:13,857,921.12 and E: 3,215,107.91:

THENCE with the east line of the called 80 acre tract N02°31'54"W 484.34 feet to a 1/2" iron rod '5502' set at the southeast corner of the said 0.742 acre tract out of the said called 80 acre tract, also being in the west line of the said 190.8 acre tract. From said iron rod an existing chain link fence corner bears S20°03'06"E 2.65 feet.

THENCE S 87°32'27"W 100.00 feet to an iron rod found with cap stamped '2068'.

THENCE N 02°31'54" W with the west line of the said 0.742 acres 323.20 feet to a 1/2" iron rod set with cap '5502' at the northwest corner of the herein described 0.742 acre tract.

THENCE N 87°32'27"E 100.00 feet to a ½" iron rod set '5502' in the west line of the said 190.8 acre tract, also being the east line of the said 80 acre tract and the northeast corner of the herein described 0.742 acre tract. From said iron rod an existing chain link fence corner bears S11°32'08"E 3.28 feet.

THENCE N 02°31'54" W with the west line of the said 190.8 acre tract and the west line of Residue One tract, also being the east line of the said 80 acre tract, at 105.03 feet pass a ½" iron rod set '5502' as reference, and continue for a total distance of 145.03 feet to a point on the line of mean high water from which a chain link fence post bears N40°23'08"E 1.74 feet.

THENCE with the line of mean high water the following meanders:

L1	N53°58'11"E	82.79 feet;
L2	N65°10'44"E	28.54 feet;
L3	N25°48'47"E	26.85 feet;
L4	S88°15'09"E	41.32 feet;
L5	S21°30'35"E	36.86 feet;
L6	N87°55'44"E	74.71 feet;
L7	S73°48'40"E	35.76 feet;
L8	S02°11'01"E	183.58 feet;
L9	S02°12'39"W	267.80 feet;
L10	S27°57'09"E	9.12 feet;
L11	S45°26'57"E	15.69 feet;
L12	S61°42'32"E	175.82 feet;
L13	N56°50'44"E	94.95 feet;
L14	N52°19'13"E	179.58 feet;
L15	S79°27'52"E	14.88 feet;
L16	N00°37'00"W	27.60 feet;
L17	N15°29'28"E	41.88 feet;
L18	N01°36'53"E	294.82 feet;
L19	N20°20'17"E	44.72 feet;
L20	N86°09'14"E	77.82 feet;
L21	S39°13'12"E	40.41 feet;
L22	N73°31'36"E	31.98 feet;
L23	N49°52'20"E	30.97 feet;
L24	S74°27'25"E	32.95 feet;
L25	S38°47'57"E	73.14 feet;
L26	S22°50'50"E	66.58 feet;
L27	S33°02'30"E	69.03 feet;
L28	S13°15'14"E	87.74 feet;
L29	S12°27'06"E	86.91 feet;
L30	S35°50'06"E	80.51 feet;
L31	S07°52'21"E	89.97 feet;
L32	S23°19'20"W	49.33 feet;
L33	S81°19'59"W	50.43 feet;
L34	S67°18'15"W	78.63 feet;

L35	S40°10'19"W	46.49 feet;
L36	S15°55'28"W	69.84 feet;
L37	S03°17'11"E	72.55 feet;
L38	S14°05'38"W	83.40 feet;
L39	S76°32'52"W	51.28 feet;
L40	S29°20'36"W	81.87 feet;
L41	S71°41'00"W	109.37 feet;
L42	S42°47'30"W	131.08 feet;
L43	S65°25'31"W	76.49 feet;
L44	N78°14'08"W	65.08 feet;
L45	S64°42'47"W	14.56 feet to a point at the intersection of the line of mean high water with the north right-of-way line of Interstate Highway 10.

THENCE with a portion of a curve having a radius of 1910.00 feet and a central angle of 49°45'00", the chord of which bears N79°13'10"W 432.24 feet to the PLACE OF BEGINNING of this portion of description containing 0.742 and 17.55 acres (Residue Area One) for a total acreage described of 18.292 acres.

RESIDUE AREA TWO:

BEGINNING on the line of mean high water at state plane coordinate value N:13,859,605.46 and E:3,216,797.72.

THENCE with the line of mean high water the following meanders:

L46	N04°23'08"E	18.98 feet;
L47	S82°16'28"E	89.71 feet;
L48	S19°43'42"W	32.88 feet;
L49	S65°41'41"E	28.40 feet;
L50	N09°21'37"E	40.41 feet;
L51	S86°54'18"E	13.89 feet;
L52	S66°58'16"E	99.64 feet;
L53	S54°17'52"W	62.10 feet;
L54	S81°28'45"W	69.45 feet;
L55	N68°19'32"W	53.83 feet;
L56	N37°42'10"W	78.73 feet to the PLACE OF BEGINNING, containing 0.28 acre of land.

RESIDUE AREA THREE:

BEGINNING on the line of mean high water at state plane coordinate value N:13,858,992.69 and E:3,218,011.53.

THENCE with the line of mean high water the following meanders:

L57	N01°47'03"E	80.55 feet;
L58	N52°11'03"E	28.27 feet;
L59	S62°02'30"E	61.75 feet;
L60	S57°11'44"E	75.55 feet;
L61	S67°16'18"E	72.06 feet;
L62	S52°00'45"E	123.97 feet;

L63	S50°30'21"E	109.26 feet;
L64	S31°30'14"E	154.37 feet;
L65	S30°53'18"W	73.65 feet;
L66	S15°54'02"E	60.81 feet;
L67	S13°39'18"W	81.38 feet;
L68	S20°20'29"W	78.12 feet;
L69	N76°30'21"W	33.51 feet;
L70	N09°09'14"W	66.49 feet;
L71	N01°11'45"W	104.97 feet;
L72	N16°34'16"W	145.29 feet;
L73	N61°03'52"W	124.86 feet;
L74	N45°12'33"W	96.25 feet;
L75	N73°23'12"W	113.92 feet;
L76	N33°07'13"W	37.65 feet;
L77	N14°08'33"W	42.60 feet to the PLACE OF BEGINNING, containing

2.02 acres of land.

RESIDUE AREA FOUR:

BEGINNING on the line of mean high water at state plane coordinate value N: 13,858,637.53 and E: 3,218,521.32.

THENCE with the line of mean high water the following meanders:

L78	S44°27'20"E	51.35 feet;
L79	S17°04'32"E	124.37 feet;
L80	S13°01'37"E	56.51 feet;
L81	S15°37'52"W	24.00 feet;
L82	N12°37'35"W	151.14 feet;
L83	N38°57'27"W	92.00 feet;
L84	N39°32'35"E	19.05 feet to the PLACE OF BEGINNING, containing

0.07 acres of land.

RESIDUE AREA FIVE:

BEGINNING at a ¾" iron pipe at the southwest corner of said 20 acre tract described in Volume 6037, Page 352, also being the southeast corner of the herein described Residue Area Five. Said iron pipe is in the north right-of-way of Interstate Highway 10 and has a state plane coordinate value of N: 13,857,338.33 and E: 3,216,627.00.

THENCE with the northerly right-of-way of Interstate 10 N64°25'13"W 931.17 feet to the PC of a curve having a radius of 1910.00 feet and a central angle of 49°45'00".

THENCE with a portion of said curve the chord of which bears N66°26'37"W
131.58 feet to the intersection of the said ROW line with the line of mean high water.
THENCE with the line of mean high water the following meanders:

L87	S86°01'39"E	51.59 feet;
L88	S82°36'07"E	35.73 feet;
L89	S65°57'00"E	105.54 feet;
L90	S60°36'12"E	55.64 feet;
L91	S45°17'18"E	71.68 feet;
L92	S65°30'45"E	113.80 feet;
L93	S77°10'41"E	262.44 feet;
L94	N86°48'54"E	63.72 feet;
L95	S10°56'39"W	33.03 feet;
L96	S59°22'32"E	190.86 feet;
L97	S71°17'43"E	23.64 feet;
L98	S71°38'07"E	48.95 feet;
L99	S21°25'41"E	76.46 feet to the PLACE OF BEGINNING, containing 0.80 acres of land.

EXHIBIT B
TO THE SPECIAL WARRANTY DEED
FROM
BIG STAR BARGE & BOAT COMPANY, INC.
TO SAN JACINTO RIVER FLEET, LLC

Reservations and exceptions:

- a. Rights of Parties in possession. (OWNER POLICY ONLY)
- b. Pipe line easement granted to Humble Pipe Line Company, as set forth and evidenced by instrument(s) filed for record under Harris County Clerk's File No(s). B-119504. (Volume 3900, Page 246)
- c. Basement granted to Houston Lighting & Power Company as set forth and described by instrument(s) filed for record under Harris County Clerk's File No(s). T-023761
- d. Pipeline easement granted to Humble Oil & Refining Company, by instrument(s) recorded in Volume 934, Page 485 of the Deed Records of Harris County, Texas. (Defined under Harris County Clerk's File No. C-217233)
- e. Right-of-way granted to Humble Pipe Line Company, by instrument(s) recorded in Volume 1068, Page 112 of the Deed Records of Harris County, Texas. (Defined under Harris County Clerk's File No. C-150379)
- f. Pipeline easement granted to Humble Pipe Line Company, by instrument(s) filed for record under Harris County Clerk's File No(s). C-775373.
- g. Easement granted to Houston Lighting & Power Company as set forth and evidenced by instrument(s) filed for record under Harris County Clerk's File No(s). G-654979.
- h. Easement for ingress and egress as set forth and evidenced by instrument(s) filed for record under Harris County Clerk's File No(s). G-654979.
- i. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 452, Page 339, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- j. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 441, Page 299, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- k. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 437, Page 591, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- l. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 452, Page 336, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- m. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 440, Page 120, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)

- n. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 793, Page 602, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- o. 1/16th of all oil, gas and other minerals as set forth in instrument(s) filed for record under Harris County Clerk's File No(s) B-119504. (Title to said interest not checked subsequent to its date of execution.)
- p. All oil, gas and other minerals as set forth in instrument(s) filed for record under Harris County Clerk's File No(s) D-165288, D-168046, D-057648, D-057649, D-057650, D-057651 and D-324812. (Title to said interest not checked subsequent to its date of execution.)
- q. The terms conditions and stipulations of that certain mineral lease(s) filed for record under Harris County Clerk's File No(s). L-646620. (Title to said lease not checked subsequent to its date of execution.)
- r. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 2541, Page 315, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- s. The terms, conditions and stipulations of that certain mineral lease(s) filed for record under Harris County Clerk's File No(s). C-349921.(Title to said lease not checked subsequent to its date of execution.)
- t. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 959, Page 457, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- u. All oil, gas and other minerals as set forth in instrument(s) recorded in Volume 1160 Page 547, of the Deed Records of Harris County, Texas. (Title to said interest not checked subsequent to its date of execution.)
- v. The terms, conditions and stipulations of that certain mineral lease(s) filed for record under Harris County Clerk's File No(s). L-166983. (Title to said lease not checked subsequent to its date of execution.)
- w. The terms, conditions and stipulations of that certain mineral lease(s) filed for record under Harris County Clerk's File No(s). X-253212.(Title to said lease not checked subsequent to its date of execution.)
- x. Any and all unrecorded leases and/or rental agreements, with rights of tenants in possession.
- y. Intentionally deleted.
- z. This company shall have no liability for, nor responsibility to defend, any part of the property described herein against any right, title, interest or claim (valid or invalid) or any character had or asserted by the State of Texas or by any other Government or Governmental Authority or by the public generally (1) in and to portions of the above described property which may be within the bed, shore or banks of a perennial stream or lake navigable in fact or in law or within the bed or shores or the beach adjacent thereto

of a body of water affected by the ebb and flow of the tide; and (2) in and to portions of the above described property which may be between the water's edge and the line of vegetation on the upland or for any claim or right of ingress thereto or egress therefrom.

- aa. This Company shall have no liability for, nor responsibility for, nor responsibility to defend any part of the property described against any right, title, interest or claim (valid or invalid) of any character had or asserted by the State of Texas or by any Government or Governmental Authority, or by the public, generally in or to any portions of the herein described property that may lie within the bed of the San Jacinto River, and further, this Company does not guarantee changed in the boundaries of subject property caused by the forces of erosion, accretion and/or avulsion.
- bb. Intentionally deleted.
- cc. This examination includes the following: that the Underwriter guidelines have been checked to allow a T-19 Endorsement to be issued, subject to the payment of assessments having been paid, the release of right of first refusal if required above. However, subject to Underwriter approval of encroachments or violation of restrictions if any shown on survey.
- dd. Chain link fence encroaches 2.91' into tract on south, as evidenced by survey dated May 2011, prepared by Nedra J. Foster, Registered Professional Land Surveyor No. 5502.
- ee. Billboards, access gates, pipeline signs, barge anchors and drain, as evidenced by survey dated May 2011, prepared by Nedra J. Foster, Registered Professional Land Surveyor, No. 5502.
- ff. Variance between fence line(s) and property line(s), as evidenced by survey dated May 2011, prepared by Nedra J. Foster, Registered Professional Land Surveyor No. 5502.

EXHIBIT F

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EXHIBIT F

AUDIOTAPE TRANSCRIBED
BY SONYA B. BRITT, CSR

THE SAN JACINTO RIVER WASTE PIT SITE

INTERVIEW TAKEN ON
NOVEMBER 14, 2005
BY BARBARA ALDRIDGE
OF
CAPTAIN JACK ROBERTS

ORIGINAL

9076103



1 (Beginning of audiotape.)

2 MS. ALDRIDGE: Okay. And you're aware that
3 we're taping, so you don't mind that we're taping, right?

4 CAPTAIN ROBERTS: Not at all.

5 MS. ALDRIDGE: Okay. This is Barbara
6 Aldridge with the EPA and I'm in Pearland, Texas,
7 interviewing Captain Jack Roberts and this is concerning
8 the San Jacinto River waste pit site, and today is November
9 14th, 2005. And I'm going to ask Captain Jack, would you
10 please identify yourself and your current address, please.

11 CAPTAIN ROBERTS: Okay. My name is Jack
12 Roberts and I live at (6)(b) (6)(b) Texas
13 77581.

14 MS. ALDRIDGE: Okay. We're looking at an
15 aerial photograph of the area that we're calling the
16 San Jacinto River waste pit site and --

17 CAPTAIN ROBERTS: Well, I -- I think that if
18 we can identify that, I think that we're discussing the
19 Magen's waste site --

20 MS. ALDRIDGE: Right.

21 CAPTAIN ROBERTS: -- not my -- my property --

22 MS. ALDRIDGE: Uh-huh.

23 CAPTAIN ROBERTS: -- just the Magen's
24 property.

25 MS. ALDRIDGE: Right. And we're calling it

1 -- the EPA's name for it and the State of Texas name for it
2 is the San Jacinto River Waste Pit Site.

3 CAPTAIN ROBERTS: Okay.

4 MS. ALDRIDGE: Yes, it does comprise of
5 twenty acres that we'll call the Magenis property.

6 CAPTAIN ROBERTS: Yes.

7 MS. ALDRIDGE: Okay. I just want to make
8 clear that we're talking about the same piece of land here.
9 Okay. What is your connection with the Magenis property?

10 CAPTAIN ROBERTS: I have no connection with
11 the Magenis property except my land adjoins it.

12 MS. ALDRIDGE: Okay. You have -- your land
13 adjoins it?

14 CAPTAIN ROBERTS: Yes. On the north and west
15 side --

16 MS. ALDRIDGE: Okay.

17 CAPTAIN ROBERTS: -- and the San Jacinto
18 River is on the east side and the feeder road is on the
19 south side.

20 MS. ALDRIDGE: Okay. And what year was it
21 that you obtained your property and came to be the neighbor
22 of this property?

23 CAPTAIN ROBERTS: About 1972.

24 MS. ALDRIDGE: Okay. At that time what was
25 your understanding of the use of the Magenis property?

1 CAPTAIN ROBERTS: I had no idea what it was
2 being used for at that time when I bought it.

3 MS. ALDRIDGE: Okay. And when did you become
4 to be aware that there was anything going on with the
5 Magenis property?

6 CAPTAIN ROBERTS: Hell, I saw barges coming
7 in and out periodically underneath the bridge and -- and I
8 -- as a marine surveyor, because that's what my vocation
9 was before I retired, I was told by the Home Insurance
10 Company to survey a barge that the -- a Pasadena plant and
11 Champion Paper, which was Champion Paper then and it -- the
12 barge had sunk over the weekend to represent them as a --
13 as a surveyor on handling the loss.

14 MS. ALDRIDGE: Uh-huh.

15 CAPTAIN ROBERTS: And then later on I was
16 called by the Home Insurance Company, I believe it was
17 Home, to -- to handle the barge that had broken loose from
18 this property and hit the I-10 bridge.

19 MS. ALDRIDGE: Okay. So when you said barges
20 were coming, what direction were they coming from?

21 CAPTAIN ROBERTS: Well, they were coming from
22 the south -- from -- this is the San Jacinto -- or the
23 Houston ship channel over here --

24 MS. ALDRIDGE: Uh-huh.

25 CAPTAIN ROBERTS: -- and this is north.

1 MS. ALDRIDGE: Uh-huh.

2 CAPTAIN ROBERTS: The direction they were
3 coming, they would come from Pasadena down the Houston ship
4 channel to the San Jacinto River up to Lynchburg underneath
5 the bridge and tie up and bunk in at this area there.

6 MS. ALDRIDGE: Okay.

7 CAPTAIN ROBERTS: Actually, I thought it was
8 a spoil pit they were bumping into.

9 MS. ALDRIDGE: Uh-huh. And what year was
10 that when you were --

11 CAPTAIN ROBERTS: I --

12 MS. ALDRIDGE: -- at the job as --

13 CAPTAIN ROBERTS: -- I've gone -- Barbara,
14 I've gone through my files. I've moved my office three
15 times since that time. I don't have any records at all on
16 it.

17 MS. ALDRIDGE: Uh-huh.

18 CAPTAIN ROBERTS: I'd have to go back and
19 talk with friends who had shifted the barges around and I
20 don't -- I don't have any idea, but I know it was a long
21 time ago.

22 MS. ALDRIDGE: Okay. Can you take a -- just
23 a guess? In the '70s? In the '80s?

24 CAPTAIN ROBERTS: Oh, I would say the late
25 '70s, yes.

1 MS. ALDRIDGE: In the late '70s. Okay.

2 Okay. So we've talked about Magenis property. The
3 company's name was Magenis Industrial Maintenance
4 Corporation?

5 CAPTAIN ROBERTS: Yes.

6 MS. ALDRIDGE: Can you tell us anything about
7 this company?

8 CAPTAIN ROBERTS: Well, I -- (coughs) excuse
9 me. I knew Virgil Magenis had owned the company and he
10 belonged to the country club here where I live and he had
11 his office in Pearland. He later bought the Bail Bottom
12 Foundation (phonetic).

13 MS. ALDRIDGE: Uh-huh.

14 MS. RUSSELL: Virgil died some years back and
15 that's all I ever knew about him. I had seen him at social
16 events at the country club, but --

17 MS. ALDRIDGE: Uh-huh.

18 CAPTAIN ROBERTS: -- but I never met him
19 professionally in any place.

20 MS. ALDRIDGE: Uh-huh. Okay. So your only
21 familiarization with the Magenis -- oops -- with the
22 Magenis company is that because this property was next to
23 your property?

24 CAPTAIN ROBERTS: That's correct.

25 MS. ALDRIDGE: Okay. Okay. Besides Virgil

1 Magen is, do you know any of the other names of the people
2 that were involved with that company?

3 CAPTAIN ROBERTS: There was a fellow, his
4 name is Roland. He's Virgil -- Virgil Magen is' nephew.

5 MS. ALDRIDGE: Uh-huh. Do you know if he's
6 still around?

7 CAPTAIN ROBERTS: I have no idea.

8 MS. ALDRIDGE: Okay.

9 CAPTAIN ROBERTS: His name is in my --

10 MS. ALDRIDGE: Oh, in your letter to...

11 CAPTAIN ROBERTS: Ro- -- Roland Magen is is
12 his name.

13 MS. ALDRIDGE: Uh-huh.

14 CAPTAIN ROBERTS: That's Virgil Magen is'
15 nephew --

16 MS. ALDRIDGE: Uh-huh.

17 CAPTAIN ROBERTS: -- but I just said in my
18 letter that Virgil passed away several years back.

19 MS. ALDRIDGE: Uh-huh. Okay. And we're
20 referring to your June 2nd, 2005 letter to Marshall Cedilot
21 at TCEQ.

22 CAPTAIN ROBERTS: I sent it to Bill Warden at
23 Harris County and I sent it to Catherine Sherman at TCEQ's
24 office in Houston.

25 MS. ALDRIDGE: Right. Okay. So besides

1 Roland and Virgil, can you think of any other names --

2 CAPTAIN ROBERTS: No, I --

3 MS. ALDRIDGE: -- that were involved with the
4 company Magenis?

5 CAPTAIN ROBERTS: -- I never met anyone. I
6 was just looking through my file here and here's a letter
7 that -- from Texas Water & Pollution I guess which is now
8 TCEQ --

9 MS. ALDRIDGE: Right.

10 CAPTAIN ROBERTS: -- dated July the 29th of
11 1956. I sent this to them.

12 MS. ALDRIDGE: No, that looks like '66.

13 CAPTAIN ROBERTS: 1966.

14 MS. ALDRIDGE: Right. Uh-huh.

15 CAPTAIN ROBERTS: So they were -- they were
16 in operation at this site at that time.

17 MS. ALDRIDGE: Right.

18 CAPTAIN ROBERTS: And they were getting ready
19 to close -- obviously, they were getting ready to close us
20 down because he later moved his operation to a place in
21 Galveston Bay down -- West Galveston Bay.

22 MS. ALDRIDGE: Uh-huh. So at one point you
23 believe he quit using this site here?

24 CAPTAIN ROBERTS: Yes, I think that was
25 probably about the time that he -- he wrote this letter and

1 he was trying to drain the --

2 MS. ALDRIDGE: Uh-huh.

3 CAPTAIN ROBERTS: -- the --- the pit --

4 MS. ALDRIDGE: Uh-huh.

5 CAPTAIN ROBERTS: -- out, so he could abandon
6 the pit or sell the property.

7 MS. ALDRIDGE: Uh-huh. So like in the late
8 '60s?

9 CAPTAIN ROBERTS: Yeah, '66.

10 MS. ALDRIDGE: Uh-huh.

11 CAPTAIN ROBERTS: He calls it a holding pond.

12 MS. ALDRIDGE: Uh-huh. All right. Okay. So
13 as far as you know, when did Magen's cease to operate at
14 this site or cease to bring the barges --

15 CAPTAIN ROBERTS: I -- I don't -- I don't
16 recall.

17 MS. ALDRIDGE: You don't recall?

18 CAPTAIN ROBERTS: Huh-uh.

19 MS. ALDRIDGE: When did you become aware that
20 this property next to yours was abandoned or no longer in
21 use?

22 CAPTAIN ROBERTS: All I know -- you know,
23 being in and out of there periodically that it wasn't being
24 used for anything. In my aerial photographs I had taken
25 periodically, I didn't see any activity going on.

1 MS. ALDRIDGE: Uh-huh. Okay. Okay. In your
2 letter to TCEQ, you mentioned that the Magenis property was
3 acquired for the purpose of storage of waste slough from
4 Champion Paper in Pasadena. What's the source of that?

5 CAPTAIN ROBERTS: Just having gone to
6 Pasadena and handled the loss that was there and view there
7 -- they had an ogger (phonetic) that was being used to pull
8 the scrap paper out --

9 MS. ALDRIDGE: Uh-huh.

10 CAPTAIN ROBERTS: -- and to load it into the
11 barge with -- with oggers.

12 MS. ALDRIDGE: Uh-huh. So do you know who
13 acquired the property and -- and when?

14 CAPTAIN ROBERTS: After Magenis?

15 MS. ALDRIDGE: Uh-huh.

16 CAPTAIN ROBERTS: No, I didn't know this
17 until I think someone, during my correspondence, said Waste
18 Management --

19 MS. ALDRIDGE: Uh-huh.

20 CAPTAIN ROBERTS: -- in fact, I talked to
21 Magenis when this came about. I was a little concerned
22 about my property because they said there might be some
23 contamination on my property.

24 MS. ALDRIDGE: Uh-huh.

25 CAPTAIN ROBERTS: And so I called Magenis and

1 the lady referred me to her attorney.

2 MS. ALDRIDGE: Uh-huh.

3 CAPTAIN ROBERTS: And he said that they no --
4 just very abruptly said that they no longer owned that
5 property and this was in the last year or so.

6 MS. ALDRIDGE: Oh, okay. So as far as, say,
7 Champion Paper and the barges, what kind of route -- if
8 there was a barge coming from the paper facility, would it
9 come this route, too?

10 CAPTAIN ROBERTS: Yes. That's --

11 MS. ALDRIDGE: This part of the river?

12 CAPTAIN ROBERTS: So as far as I know, that's
13 the only the place you got any -- any product from.

14 MS. ALDRIDGE: Uh-huh. And how far away is,
15 say by water, is the Champion facility?

16 CAPTAIN ROBERTS: Probably seven miles.

17 MS. ALDRIDGE: Okay. So they would have come
18 up the ship channel this way?

19 CAPTAIN ROBERTS: Down the ship channel.

20 MS. ALDRIDGE: Down.

21 CAPTAIN ROBERTS: Down the south, down this
22 ship channel to the San Jacinto River --

23 MS. ALDRIDGE: Uh-huh.

24 CAPTAIN ROBERTS: -- and made a left turn at
25 the fork -- at the fork --

1 MS. ALDRIDGE: Oh, okay.

2 CAPTAIN ROBERTS: -- and come up -- the
3 San Jacinto River is down here, down to the south.

4 MS. ALDRIDGE: Uh-huh.

5 CAPTAIN ROBERTS: Lynchburg Ferry comes
6 across here and the San Jacinto Monument is over here --

7 MS. ALDRIDGE: Uh-huh.

8 CAPTAIN ROBERTS: -- underneath the bridge.

9 MS. ALDRIDGE: We can probably see this a
10 little better.

11 CAPTAIN ROBERTS: Okay. Well, that's --
12 okay. This -- the San Jacinto River is right here. This
13 doesn't --

14 MS. ALDRIDGE: Uh-huh.

15 CAPTAIN ROBERTS: -- show the Houston ship
16 channel.

17 MS. ALDRIDGE: Oh, okay. That's down here?

18 CAPTAIN ROBERTS: Uh-huh.

19 MS. ALDRIDGE: Okay.

20 CAPTAIN ROBERTS: To the south.

21 MS. ALDRIDGE: Uh-huh. So it would come out
22 the Houston ship channel and then head up the river?

23 CAPTAIN ROBERTS: Head up the river and went
24 underneath the bridge and tied it up to -- on the port side
25 of...

1 MS. ALDRIDGE: Okay. So when you say, "Waste
2 Management," you mean Waste Management incorporated the
3 company, right?

4 CAPTAIN ROBERTS: Magen is -- no --

5 MS. ALDRIDGE: The Magen is --

6 CAPTAIN ROBERTS: -- Waste --

7 MS. ALDRIDGE: -- property being acquired
8 by --

9 CAPTAIN ROBERTS: I assumed it to be acquired
10 based on what they told me.

11 MS. ALDRIDGE: Okay. All right. Back to the
12 accidents you mentioned in your letter that you witnessed.
13 Okay. You witnessed two accidents or respected the under-
14 -- the insurance underwriters on two accidents?

15 CAPTAIN ROBERTS: Yes.

16 MS. ALDRIDGE: Can you tell me little bit
17 more about those?

18 CAPTAIN ROBERTS: Well, the first one
19 occurred -- I don't remember exactly when, but it
20 occurred -- they had a barge -- they -- what they were
21 doing, they were bringing the barge in to Champion Paper
22 which is over on the south side of the Houston ship channel
23 in Pasadena right at the Pasadena underpass.

24 MS. ALDRIDGE: Uh-huh.

25 CAPTAIN ROBERTS: And they docking the barge

1 there and then they had a ogger set up at the -- this slot
2 material paper, I guess, waste material, we call it waste,
3 whatever it was, would come out and they would bring it by
4 a belt and ogger up. Put the ogger out over the top of the
5 barge and then just let it proceed along.

6 One -- one weekend, apparently, somebody just
7 left the ogger running and left the barge there --

8 MS. ALDRIDGE: Uh-huh.

9 CAPTAIN ROBERTS: -- thinking that it would
10 automatically --

11 MS. ALDRIDGE: Uh-huh.

12 CAPTAIN ROBERTS: -- you know, fill itself
13 up. Well, it did. It filled itself up and it sank
14 and -- and that's when the in- -- the Home Insurance
15 Company called me.

16 MS. ALDRIDGE: Uh-huh.

17 CAPTAIN ROBERTS: And the second occasion was
18 some years after that when they tied the barge up on the
19 Magenis property and it had strong winds and high tides and
20 it washed it off and hit the bridge.

21 MS. ALDRIDGE: Uh-huh. So it was tied up
22 here on the Magenis property --

23 CAPTAIN ROBERTS: Yes --

24 MS. ALDRIDGE: -- on --

25 CAPTAIN ROBERTS: -- on the property over on

1 this side, on the north side.

2 MS. ALDRIDGE: Okay. Kind of on the
3 northeast side of it?

4 CAPTAIN ROBERTS: Uh-huh.

5 MS. ALDRIDGE: And then it hit the bridge
6 down here somewhere?

7 CAPTAIN ROBERTS: Down here right on that
8 corner.

9 MS. ALDRIDGE: Uh-huh.

10 CAPTAIN ROBERTS: I'm sure the State has
11 records of when this happened because they -- the barge
12 stayed there for three or four days.

13 MS. ALDRIDGE: Uh-huh.

14 CAPTAIN ROBERTS: They couldn't get a tug in
15 there to get it off.

16 MS. ALDRIDGE: Uh-huh. Okay. So when you're
17 a marine surveyor, do you have to be licensed or certified
18 to do that --

19 CAPTAIN ROBERTS: No, there is --

20 MS. ALDRIDGE: -- at all?

21 CAPTAIN ROBERTS: -- no license in the State
22 of Texas for a marine surveyor.

23 MS. ALDRIDGE: Okay. But was that something
24 you commonly would do is...

25 CAPTAIN ROBERTS: I've been doing this since

1 1955, yes.

2 MS. ALDRIDGE: Uh-huh. And then are you also
3 licensed or certified captain?

4 CAPTAIN ROBERTS: Yes, I am.

5 MS. ALDRIDGE: So you've been around this
6 area a long time?

7 CAPTAIN ROBERTS: Well, I've been in and out
8 of the Port of Houston since 1944.

9 MS. ALDRIDGE: Uh-huh.

10 CAPTAIN ROBERTS: And I've been a resident of
11 Houston since 1955.

12 MS. ALDRIDGE: Okay. So you have lots of
13 good, local knowledge. Okay. And then the name of the
14 insurance companies that you represented, you mentioned
15 Home --

16 CAPTAIN ROBERTS: The Home Insurance.

17 MS. ALDRIDGE: -- Insurance. Was that the
18 only one?

19 CAPTAIN ROBERTS: Yes.

20 MS. ALDRIDGE: Okay. Okay. We talked about
21 the accidents and -- okay. Okay. The other thing I want
22 to reference in your letter that you mention that you
23 personally witnessed the barges being loaded and
24 discharged. So is that correct in that you witnessed
25 barges at the paper facility being loaded with material

1 from there and then witnessed the same barge or barges --

2 CAPTAIN ROBERTS: Being dis- --

3 MS. ALDRIDGE: -- at the Magenis --

4 CAPTAIN ROBERTS: -- discharged at the
5 Magenis property.

6 MS. ALDRIDGE: Okay. Can you -- do you have
7 any dates on that --

8 CAPTAIN ROBERTS: No.

9 MS. ALDRIDGE: -- approximate dates? In the
10 '70s? In the '80s?

11 CAPTAIN ROBERTS: Well, I would say probably
12 based on the letters that -- water control board's letter
13 maybe it was prior to that.

14 MS. ALDRIDGE: Uh-huh.

15 CAPTAIN ROBERTS: Because they had been
16 operating at that time and now they're getting ready to
17 shut this operation down. So based upon that, looking back
18 on it, it would have probably been in the mid-60s that
19 those accidents happened.

20 MS. ALDRIDGE: Uh-huh.

21 CAPTAIN ROBERTS: You know, I get that
22 reference from -- I would say --

23 MS. ALDRIDGE: Uh-huh. Okay. But -- but
24 witnessing the barges themselves would that have been in
25 that same time period or --

1 CAPTAIN ROBERTS: Yes. Well, it would have
2 been prior -- prior to him asking to abandon the property
3 in '66.

4 MS. ALDRIDGE: Okay.

5 CAPTAIN ROBERTS: That's why I said probably,
6 I was in the -- in the date -- in the time frame.

7 MS. ALDRIDGE: Uh-huh.

8 CAPTAIN ROBERTS: Because judging from that
9 letter, he had been in operation in the '60s.

10 MS. ALDRIDGE: Right. Okay. But the letter
11 here from '66 is where the State was giving him permission
12 to release some water --

13 CAPTAIN ROBERTS: Uh-huh.

14 MS. ALDRIDGE: -- so --

15 CAPTAIN ROBERTS: Which is if -- if -- what
16 your contention is that it contaminated at that time and
17 that would have been contaminated water. It wasn't just
18 plain water.

19 MS. ALDRIDGE: Uh-huh.

20 CAPTAIN ROBERTS: I -- I can't imagine why it
21 -- of course, we didn't have the restrictions that we have
22 now --

23 MS. ALDRIDGE: Right.

24 CAPTAIN ROBERTS: -- modern times and people
25 were -- (inaudible) -- worked out.

1 MS. ALDRIDGE: Uh-huh. Well, the -- Marshall
2 is doing some more research to see if he can find any more
3 files back during this time period with the State, but I --
4 I don't know what he's come up with, so --

5 CAPTAIN ROBERTS: Well, I'm -- I'm reasonably
6 certain that the -- the Maintenance Department, the Texas
7 Highway Department, they keep track of what goes on with
8 that bridge.

9 MS. ALDRIDGE: Uh-huh. Okay. But I mean, as
10 far as witnessing a barge being loaded by the paper company
11 and being unloaded here, was that also -- have been in the
12 late '60s, or -- so you --

13 CAPTAIN ROBERTS: Probably the mid-60s based
14 upon that letter.

15 MS. ALDRIDGE: Okay. But you said you
16 acquired the site, the property next to the Magenis
17 property --

18 CAPTAIN ROBERTS: In the '72.

19 MS. ALDRIDGE: -- in '72?

20 CAPTAIN ROBERTS: Right.

21 MS. ALDRIDGE: So just in your capacity as --

22 CAPTAIN ROBERTS: As a marine surveyor --

23 MS. ALDRIDGE: -- a marine surveyor and
24 captain, you just were familiar with this whole area, not
25 necessarily because you were in the --

1 CAPTAIN ROBERTS: No. No. I -- there's
2 several shipyards in this area south of the San Jacinto
3 bridge --

4 MS. ALDRIDGE: Uh-huh.

5 CAPTAIN ROBERTS: -- the southwestern barge
6 fleet company and there's a channel shipyard over here.

7 MS. ALDRIDGE: Uh-huh.

8 CAPTAIN ROBERTS: As a marine surveyor, I was
9 in the area of periodically maybe once a week, maybe twice
10 a week --

11 MS. ALDRIDGE: Uh-huh.

12 CAPTAIN ROBERTS: -- going into the shipyards
13 and inspect barges and tugs and...

14 MS. ALDRIDGE: Uh-huh. Okay. So you also
15 mention here in your letter that as a marine surveyor, you
16 represented insurance companies and inspected barges,
17 numbered One, Two, Three and Four as well as the tugs,
18 Kingfish and Cyclops --

19 CAPTAIN ROBERTS: Yes.

20 MS. ALDRIDGE: -- that pushed the tugs from
21 Pasadena to the San Jacinto River site. So when you say
22 that, are you talking about pushing the tugs from the
23 papers facility to --

24 CAPTAIN ROBERTS: To the Magenis property.

25 MS. ALDRIDGE: -- to our Magenis --

1 CAPTAIN ROBERTS: -- and returning.

2 MS. ALDRIDGE: Okay. And -- but you don't
3 remember exactly what year that was?

4 CAPTAIN ROBERTS: Like I say, you just have
5 to go back to -- back to that letter and say it was -- was
6 prior to '66.

7 MS. ALDRIDGE: Uh-huh. Okay. But you could
8 identify -- you definitely saw the same numbered or the
9 same named barge or tug at one end and you saw it like the
10 same day --

11 CAPTAIN ROBERTS: Yes.

12 MS. ALDRIDGE: -- or how long would that take
13 to take it from Pasadena to --

14 CAPTAIN ROBERTS: About six hours. Three to
15 six hours depending on the traffic.

16 MS. ALDRIDGE: Uh-huh. Okay. So was there a
17 time -- ever a time that you witnessed that on the same
18 day?

19 CAPTAIN ROBERTS: Well, it could have been.

20 MS. ALDRIDGE: Within a few days or -- I
21 mean, how long would the whole process take from loading at
22 Pasadena to unloading here? Would that be something
23 that --

24 CAPTAIN ROBERTS: I have -- I have no idea as
25 to the time it took to -- to load it or the time it took to

1 discharge it.

2 MS. ALDRIDGE: Uh-huh.

3 CAPTAIN ROBERTS: I also mentioned that --
4 tell you that I represented the insurance company of
5 Champion Paper Company who had a barge that was peri- --
6 periodically stayed there. They used it for transporting
7 products, other products.

8 MS. ALDRIDGE: Okay. Periodically stayed
9 here at the Magenis?

10 CAPTAIN ROBERTS: No. At the Pasadena plant.

11 MS. ALDRIDGE: Pasadena.

12 CAPTAIN ROBERTS: Yeah. I was in and out of
13 Pasadena plant fairly often --

14 MS. ALDRIDGE: Uh-huh.

15 CAPTAIN ROBERTS: -- I'd say four to five
16 times a year --

17 MS. ALDRIDGE: Uh-huh.

18 CAPTAIN ROBERTS: -- either doing inspections
19 on the -- I think the barge's name was the WR Crew.

20 MS. ALDRIDGE: Okay. Now, is that Champion
21 Paper Company plant in Pasadena is now --

22 CAPTAIN ROBERTS: I don't know.

23 MS. ALDRIDGE: -- (inaudible) name --

24 (inaudible). It's International Paper -- Simpson Paper,
25 does that ring a bell?

1 CAPTAIN ROBERTS: Huh-uh.

2 MS. ALDRIDGE: Okay. But when people talk
3 about the Champion Paper Company in Pasadena --

4 CAPTAIN ROBERTS: It's still referred to on
5 the waterfront as the Champion Paper Company.

6 MS. ALDRIDGE: Okay. So that's pretty
7 well-known, everybody knows what you're talking about when
8 you say Champion Paper in Pasadena?

9 CAPTAIN ROBERTS: They know more the smell
10 than that.

11 MS. ALDRIDGE: Paper companies are famous for
12 that.

13 CAPTAIN ROBERTS: Yes.

14 MS. ALDRIDGE: Okay. We're about near the
15 end of the tape here. Okay. All right. You mentioned
16 that had you don't have any of your old records or anything
17 from this time.

18 CAPTAIN ROBERTS: I do not.

19 MS. ALDRIDGE: Okay. So you don't have any,
20 like, reports or anything that you would have made for the
21 insurance companies?

22 CAPTAIN ROBERTS: No, I do not.

23 MS. ALDRIDGE: Okay. So was Home Insurance
24 located in this area?

25 CAPTAIN ROBERTS: Well, they were -- they had

1 an office here. Their home office was in New York.

2 MS. ALDRIDGE: Uh-huh. Do you know if they
3 still exist around here?

4 CAPTAIN ROBERTS: You know, Barbara, I just
5 -- I just don't know.

6 MS. ALDRIDGE: I'll check that out.

7 CAPTAIN ROBERTS: I'm reasonably certain that
8 they -- I doubt very seriously they're still here. I -- I
9 know that -- none of the employees that I knew, Justin
10 Crane and those people were gone --

11 MS. ALDRIDGE: Uh-huh.

12 CAPTAIN ROBERTS: -- a long time ago.

13 MS. ALDRIDGE: Okay. Well, I think that's
14 about all the questions I have. Can you think of anything
15 else to add?

16 CAPTAIN ROBERTS: One of the -- one of the
17 interesting things during the conversation with everyone is
18 that everybody says they can't find out who -- who's paying
19 taxes on that property. That -- that's --

20 MS. ALDRIDGE: Nobody --

21 CAPTAIN ROBERTS: Nobody?

22 MS. ALDRIDGE: -- is paying taxes on that.

23 I'm going to go ahead and shut the tape off now.

24 (End of audiotape.)

25

1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 THIS IS TO CERTIFY THAT I, SONYA B. BRITT, a
4 Certified Shorthand Reporter in and for the State of Texas,
5 reported in shorthand the audiotape as set forth in the
6 caption hereof, and that the above and foregoing 24 pages
7 contain a full, true, and correct transcript of said
8 audiotape to the best of my ability.

9 Certified to on this the 2nd day
10 of December, 2005.

11

12

13

Sonya B. Britt

14

SONYA B. BRITT,

15

Certified Shorthand Reporter
in and for the State of Texas
Certification No. 7205

16

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<p>21:3 reported 25:5 Reporter 25:4,14 reports 23:20 represent 4:12 represented 16:14 20:16 22:4 research 19:2 resident 16:10 respected 13:13 restrictions 18:21 retired 4:9 returning 21:1 right 2:3,20,25 7:25 8:9,14,17 9:12 12:12 13:3,11,23 15:7 18:10,23 19:20 23:15 ring 22:25 river 1:13 2:8,16 3:2,18 5:4 11:11 11:22 12:3,12,22 12:23 20:21 Ro 7:11 road 3:18 Roberts 1:15 2:4,7 2:11,12,17,21,23 3:3,6,10,14,17,23 4:1,6,15,21,25 5:2 5:7,11,13,18,24 6:5,8,18,24 7:3,7 7:9,11,14,17,22 8:2,5,10,13,15,18 8:24 9:3,5,9,11,15 9:18,22 10:5,10 10:14,16,20,25 11:3,10,12,16,19 11:21,24 12:2,5,8 12:11,15,18,20,23 13:4,6,9,15,18,25 14:9,12,17,23,25 15:4,7,10,14,19 15:21,25 16:4,7 16:10,16,19 17:2 17:4,8,11,15,21 18:1,5,8,13,15,20 18:24 19:5,13,18 19:20,22 20:1,5,8 20:12,19,24 21:1 21:4,11,14,19,24 22:3,10,12,15,18 22:22 23:1,4,9,13 23:18,22,25 24:4 24:7,12,16,21 Roland 7:4,11 8:1 route 11:7,9 running 14:7</p>	<p>RUSSELL 6:14 S San 1:13 2:8,16 3:2 3:17 4:22 5:4 11:22 12:3,6,12 20:2,21 sank 14:13 saw 4:6 21:8,9 says 24:18 scrap 10:8 second 14:17 see 9:25 12:9 19:2 seen 6:15 sell 9:6 sent 7:22,23 8:11 seriously 24:8 Services 25:16 set 14:1 25:5 seven 11:16 Sherman 7:23 shifted 5:19 ship 4:23 5:3 11:18 11:19,22 12:15,22 13:22 shipyard 20:6 shipyards 20:2,12 shorthand 25:4,5 25:14 show 12:15 shut 17:17 24:23 side 3:15,18,19 12:24 13:22 15:1 15:1,3 Simpson 22:24 site 1:13 2:8,16,19 3:2 8:16,23 9:14 19:16 20:21 six 21:14,15 slot 14:1 slough 10:3 smell 23:9 social 6:15 somebody 14:6 SONYA 1:11 25:3 25:14 source 10:4 south 3:19 4:22 11:21 12:3,20 13:22 20:2 southwestern 20:5 spoil 5:8 State 3:1 15:10,21 18:11 19:3 25:1,4 25:15 stayed 15:12 22:6,8 storage 10:3</p>	<p>strong 14:19 Suite 25:17 sunk 4:12 sure 15:10 survey 4:10 surveyor 4:8,13 15:17,22 19:22,23 20:8,15 T take 5:22 21:12,13 21:21 taken 1:13 9:24 talk 5:19 23:2 talked 6:2 10:20 16:20 talking 3:8 20:22 23:7 tape 23:15 24:23 taping 2:3,3 taxes 24:19,22 TCEQ 7:21 8:8 10:2 TCEQ's 7:23 Tee 2:12 tell 6:6 13:16 22:4 Texas 2:6,12 3:1 8:7 15:22 19:6 25:1,4 25:15,18 thing 16:21 things 24:17 think 2:17,18 8:1,24 10:17 22:19 24:13 24:14 thinking 14:9 thought 5:7 three 5:14 15:12 20:17 21:14 tides 14:19 tie 5:5 tied 12:24 14:18,21 time 3:24 4:2 5:15 5:21 8:16,25 16:6 17:16,25 18:6,16 19:3 21:17,17,25 21:25 23:17 24:12 times 5:15 18:24 22:16 today 2:8 told 4:9 13:10 top 14:4 track 19:7 traffic 21:15 TRANSCRIBED 1:11 transcript 25:7 transporting 22:6</p>	<p>true 25:7 trying 9:1 tug 15:14 21:9 tugs 20:13,17,20,22 turn 11:24 twenty 3:5 twice 20:9 two 13:13,14 20:17 U Uh-huh 2:22 4:14 4:24 5:1,9,17 6:13 6:17,20 7:5,13,16 7:19 8:14,22 9:2,4 9:7,10,12 10:1,9 10:12,15,19,24 11:2,14,23 12:4,7 12:14,18,21 13:24 14:8,11,16,21 15:4,9,13,16 16:2 16:9 17:14,20,23 18:7,13,19 19:1,9 20:4,7,11,14 21:7 21:16 22:2,14,17 24:2,11 underneath 4:7 5:4 12:8,24 underpass 13:23 understanding 3:25 underwriters 13:14 unloaded 19:11 unloading 21:22 use 3:25 9:21 V view 10:6 Virgil 6:9,14,25 7:4 7:4,14,18 8:1 vocation 4:8 W want 3:7 16:21 Warden 7:22 washed 14:20 wasn't 9:23 18:17 waste 1:13 2:8,16 2:19 3:2 10:3,17 13:1,2,6 14:2,2 water 8:7 11:15 17:12 18:12,17,18 waterfront 23:5 way 11:18 week 20:9,10 weekend 4:12 14:6 well-known 23:7 went 12:23 west 3:14 8:21</p>	<p>we'll 3:5 we're 2:3,3,14,15 2:18,25 3:8 7:19 23:14 we've 6:2 winds 14:19 witnessed 13:12,13 16:23,24 17:1 21:17 witnessing 17:24 19:10 worked 18:25 WR 22:19 wrote 8:25 Y Yeah 9:9 22:12 year 3:20 5:9 11:5 21:3 22:16 years 6:14 7:18 14:18 York 24:1 1 14 1:14 14th 2:9 1700 25:17 1944 16:8 1955 16:1,11 1956 8:11 1966 8:13 1972 3:23 2 2nd 7:20 2005 1:14 2:9 7:20 25:10 2006 25:16 214.257.1436 25:18 24 25:6 29th 8:10 2918 2:12 3 31 25:16 4 4750 25:17 6 60s 9:8 18:9 19:12 66 8:12 9:9 18:3,11 21:6 7 70s 5:23,25 6:1 17:10</p>
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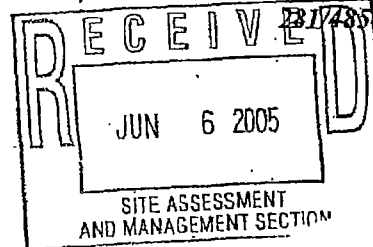
72 19:18,19 7205 25:15 75201 25:18 77581 2:13 <hr/> 8 80s 5:23 17:10				
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EXHIBIT G

EXHIBIT G



2435 East Broadway
Pearland, Texas 77581
281/485-0535
281/485-0538 fax



Mr. Marshall Cedilote
TCEQ
P. O. Box 13087
Austin, Texas 78711-3087

Mr. Wm. Warden
Harris County E.E.
16635 Clay Road
Houston, Texas 77084

Ms. Catherine Sherman
5425 Polk Ave., Ste. H
Houston, Texas 77023-1486

Re: McGinnis Property & Otto Marine (O.M.E.)

This letter will confirm our several telephone conversations regarding O.M.E. and relating to our meeting (the writer, Mr. Warden and Ms. Sherman) in Houston on June 1, 2005.

Mr. Cedilote has suggested that I write a "fact" letter as to the knows and not knows of the situation.

The McGinnis property (now Waste Management) was acquired for the purpose of storage waste sludge from Champion Paper Co. in Pasadena, Texas. This was a built up base (@ 20 acres) on the northwest corner of San Jacinto River and I-10 Intersection (bridge).

I, acting as a Marine Surveyor, representing interested Insurance Companies, inspected the barges MIMC (McGinnis Industries Maintenance Corp.) number 1-2-3-4 as well as the tugs "Kingfish" and "Cyclops" which pushed the tows from Pasadena to the San Jacinto river site.

I have personally witnessed the barges being loaded and discharged. These are open type hopper barges. Sludge is pumped in and out.

33 001

000001

Mr. Marshall Cedilote
Mr. Wm. Warden
Ms. Catherine Sherman
June 2, 2005
Page - 2 -

Acting as a Marine Surveyor, I represented the Underwriters on two(2) accidents namely:

(1) One barge sank in Pasadena loading dock due to being left unattended and loading continuing over a weekend.

(2) Barge, as advised by Roland McGinnis (Mr. Virgil McGinnis', now deceased, nephew) who was operating office for MIMC was intended to be scrapped - filled with water and partially sunk at the I-10 site. Due to high tide and strong winds the barge floated itself and struck the I-10 bridge - Rowland reported the intention to the writer and several others and believe his claim was denied.

Enclosed with this letter is a copy of Pollution Control Board's letter dated July 29, 1966 to MIMC.

H.I.T. has leased one(1) dock (barge), office space, warehouse space and sold O.M.E. twelve(12) storage tanks which are now in place.

Big Star Barge & Boat has leased a tank barge "Star Diamond" to O.M.E. (formally Petroleum Stripping) for the past years. At this time we can state that neither the rent or charter hire is current - past 14+ months due.

O.M.E. operations was conducted by Michael Otto Jr., his wife, Michael Otto III, Kevin Otto, Winfred Vetter (281/550-3649), and Steve Sawyer (trying to locate) since he apparently signed off on reports.

We were given a copy of Ms. Sherman's excellent report, and it outlines the vessel that O.M.E. discharged cargo off however there is not a mention of tugs he allowed to pump their bilges off - we know of one tug "Neta E", Echo Towing Co., Mr. Tom Echols, 281/426-5541/ It is obvious from Ms. Sherman's report that O.M.E. has for several years been operating in violation of no permit to handle products involved; not properly manifesting, etc. which had they been stopped at the time - we would not have the cargo in tanks.

O.M.E. has insurance coverage and a copy of that policy has been given to Mr. Warden. Insurance agent is Harold Hobbs (713/776-9363) who is also agent for H.I.T. and Big Star Barge.

A chemical analysis has been made on the cargo in the twelve(12) tanks and that analysis has been given to Mr. Warden and copies can be made available if needed.

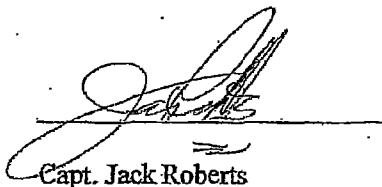
Mr. Marshall Cedilote
Mr. Wm. Warden
Ms. Catherine Sherman
June 2, 2005
Page - 3 -

A this time H.I.T. would like to express our concerns since summer is coming and heat can cause fluids to expand and form pressure. H.I.T. does not have the funds to dispose of this cargo that had been generated by O>M.E. and respectfully request that priority be given to the situation. A spill would be a catastrophe to the area.

We have been cooperative with situation (have spent several thousand dollars, time etc) and in closing assure your agencies that we will continue in this effort.

Trusting that the information provided herein will assist in the conclusion.

With respects,



Capt. Jack Roberts

JR:hr

Enclosure



Texas Water Pollution Control Board

JOE D. MOORE, JR., CHAIRMAN
T. F. ANDERSON, VICE-CHAIRMAN
BEN RAMSEY
HOWARD V. ROSE

1100 WEST 49TH STREET
AUSTIN, TEXAS 78756

SAM E. WOHLFORD
J. E. BEAVY, M.D.
J. WELDON WATSON

July 29, 1966

Re: Holding Pond
Harris County, Texas

McGinnes Industrial Maintenance Corporation
201 North Richey
Pasadena, Texas 77502

Attention: Mr. V. C. McGinnes

Gentlemen:

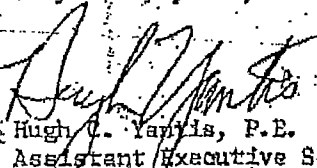
This is in response to your letter of July 21, 1966 whereby you have requested permission to release a combination of stabilized waste water and rain water from a holding pond adjacent to Old River and Interstate Highway 10.

Based on our observation of the area from the air, and on the analytical data submitted with your letter, this Board would not oppose the emptying of the ponds in any reasonable manner. It is our firm understanding that the pond will not be used again for the storage of waste material.

In view of the fact that those ponds are located in Harris County, you may wish to ascertain whether local county officials have any interest in your proposed waste discharge.

We trust the above is satisfactory to you, and if you have any questions, please let us know.

Very truly yours,


Hugh L. Yantis, P.E.
Assistant Executive Secretary

HCV:eb

ccs: Brown & Root
State Health Department
Region IV
Joe Resweber
Harris County Health Department
Local Health Services

Jun 22 2005 01:15PM PL

FRX NO. : 2814850538

FROM: ROBERTS

33 004

000004

EXHIBIT H-1

EXHIBIT H-1

NOV 30 1998



**HOUSTON
INTERNATIONAL
TERMINAL**

November 20, 1998

18001 - 1-10
CHANNELVIEW, TEXAS
REPLY TO
2918 GREEN LEE DRIVE
PEARLAND, TEXAS 77581
713-485-2464

Department of the Army
Galveston District
Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Attention: Mr. John Davidson

Re: Permit No. 19284(02)

Dear Sir:

This letter will confirm my past telephone conversations and your personal conversations with Mr. D. Moore of Mega Sand at Houston International Terminal. At this time we would like to reiterate our position which is as follows:

The original permit was issued after much discussion during conferences and meetings with Parker Brothers. As you know Parker merged to form Parker LaFarge which set back our operations by at least a year. Only one(1) barge load was removed by Parker LaFarge.

Parker LaFarge sold out and the new owners closed down the dredging operations and sold off all of their floating equipment.

All of this was done after a mitigation plan was submitted and approved. We were into 1996, and no further dredging was performed during this period.

In late 1997 we entered into a working contract with Mega Sand (Dan & Brenda Moore) who agreed to the mitigation plan. In September 1997 dredging recommenced and work on the mitigation plan started. Work progressed, but has been halted on several occasions by floods and bad weather. In the case of floods, the most recent being November 13, 14, and 15, 1998, the flood waters and currents have caused the removal of some of the material deposited in the mitigation sites.

We will keep Ms. L. Shead advised of the progress, in order that she may advise the Galveston Bay Foundation.

Corps of Engineers

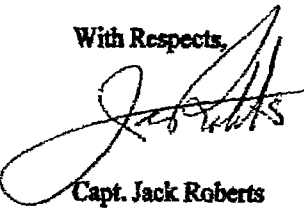
May 20, 1996

Page 2

We are writing at this time to assure the Corps and the Galveston Bay Foundation that our plans have not changed, and if weather permits will continue on course.

Thanking you for your continuing cooperation, we remain,

With Respects,



Capt. Jack Roberts

cc: Mega Sand

Encl. Letter dated 7-30-96

To U.S. Corps / John Moran

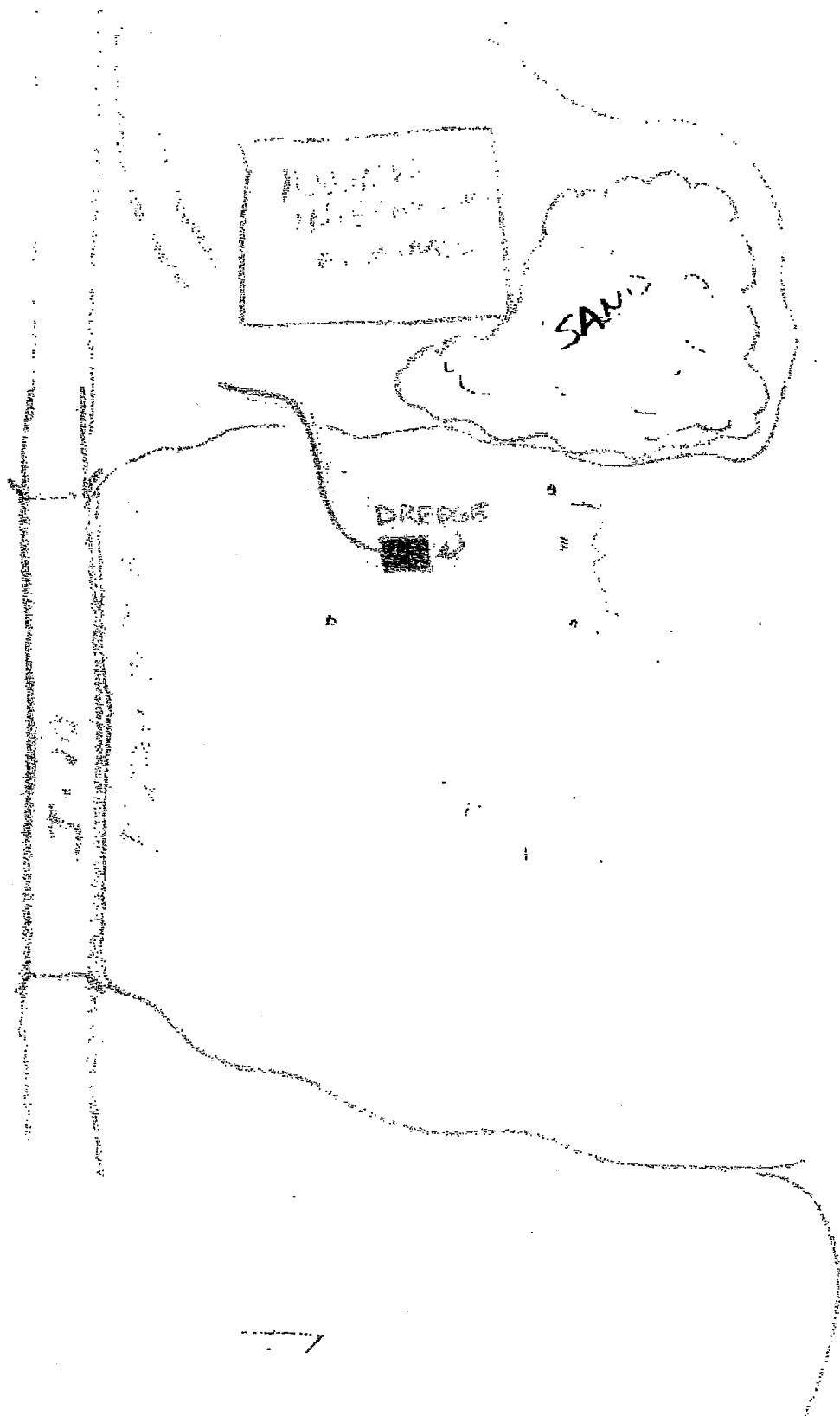
EXHIBIT H-2

EXHIBIT H-2

SITE INVESTIGATION SHEET

1. CASE I- 3931 RAMS NO. 199900554
2. ALLEGED RESPONSIBLE PARTY: Houston International Terminal/Mega Sand
POC: Captain Jack Roberts/Dan Moore
29118 Green Tee Drive/Unknown
Pearland, Texas 77581
281-485/2464 / 281-862-0808
3. PROJECT LOCATION:
Waterway: San Jacinto River (C 1.10 northwest shoreline)
County: Harris
City (closest): Channelview
Quadrangle: Highlands, TX
UTM Coordinate Zone: 15
Easting: 300925 Northing: 3297800
4. REPORT ORIGIN:
Reported by: Dan Keys (Corps)
Telephone ext. 3191
Date Reported: 9 April 1999
Investigation Date: 26 May 1999 (x Field Office)
Investigated by: Andrea Albertson/Tom Pfeffer
5. AUTHORITY: A.10 B.404 x C.10&404 D.N/A
6. SUMMARY OF INVESTIGATION: A 26 May 1999 site visit revealed a dredge spudded down in the San Jacinto River; the dredge was inactive but with pipe extending to the shoreline at Houston International Terminals. All observations correspond to the permitted activity authorized by DOA permit 19284 (and amendments) and investigated by John Davidson (PE-RC), Case I-3692. DOA permit 19284 authorized HIT to dredge sand for commercial sale and to provide a barge berthing area in the San Jacinto River. The permit also required the creation of 9 acres of wetlands to compensate for the impacts. The permit is valid until December 31, 1999 (per 19284(01) amendment). Refer to DOA 19284 and Case I-3692 for a copies of the permitted activity.
7. FINAL DISPOSITION (if applicable): The project is authorized by DOA permit 19284. Therefore, the case is closed accordingly.
8. DATE CASE CLOSED: 26 May 1999

Signed: Andrea Albertson
Andrea Albertson



UNAUTHORIZED ACTIVITY REPORT FORM

REPORTED BY: Dan Keys (OC) DATE: 4/9/99 TIME: _____

METHOD: Office Visit

RESPONSIBLE PARTY: Unknown

TELEPHONE NO.: _____ SECTION: 404 10 404/10 103 (circle)

LOCATION: San Jac River at I-10 (northside)

DESCRIPTION: near Channelview

Dredging in River at night. Likely doesn't have permit

WILL REPORT BE FOLLOWED UP WITH LETTER? YES NO (circle one)

REPORT TAKEN BY: Paula Parker-Urie

ACTIVITY ASSIGNED TO:

SWC Form 467

23 Jan 78

Andrea Albertson

Near Captain Wick's property (see previous violation)

SITE INVESTIGATION SHEET

1. CASE I- 3692 RAMS NO. 199800388
2. RESPONSIBLE PARTY(S): Houston International Terminal/Mega Sand
Point of Contact: Captain Jack Roberts/Dan Moore
Address (mailing): 29118 Green Tee Drive/Unknown
Pearland Texas 77581
(City) (State) (Zip)
Telephone: (281) 485-2464/(281) 862-0808

3. PROJECT LOCATION:

Waterway: San Jacinto River
County: Harris
City (closest): Channelview
Quadrangle: Highlands, Tex
UTM Coordinate Zone: 18
Easting: 300925 Northing: 3297800

4. REPORT ORIGIN:

Reported by: Individual
Telephone: _____
Date Reported: 20 March 1998
Investigation Date: 27 April 1998 (X Field ___ Office)
Investigated by: John Davidson

5. AUTHORITY:

___ A.10 ___ B.404 X C.10&404 ___ D.N/A

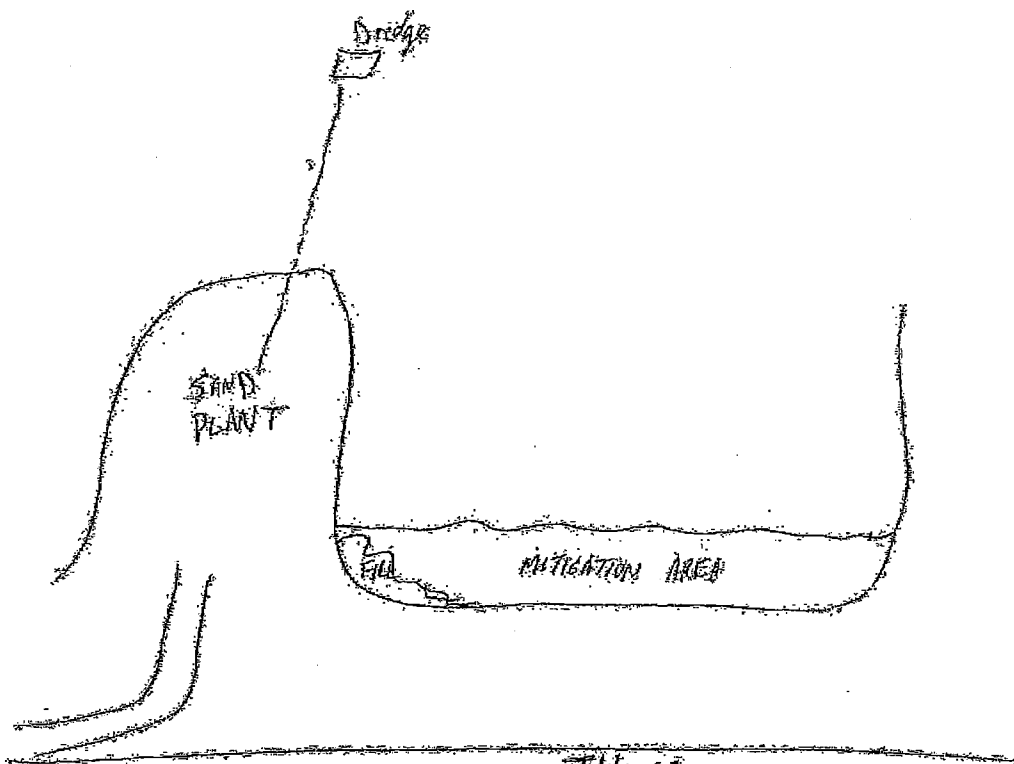
6. SUMMARY OF INVESTIGATION: Department of the Army permit 19284 and subsequent amendments authorized Houston International Terminal to dredge sand for commercial sale and to provide a barge berthing area in the San Jacinto River. The permit also required the creation of 9 acres of wetlands to compensate for the impacts. The sand mining is authorized and the alleged fill in the San Jacinto River was the initiation of the mitigation (wetland creation). We did not find any evidence of fill in wetlands as the project site is uplands where the sand processor is located and open water elsewhere. There was not a violation of Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. Case I-3692 is closed.

7. FINAL DISPOSITION (if applicable): _____

8. DATE CASE CLOSED: 6 November 1998

SITE INVESTIGATION SHEET (Cont.)

9. Drawings (with north arrow, waterbody, dimensions, etc. if appropriate)



NOTE: (Attachments to be included)

USGS Quad with approximate project location identified
Photographs (labeled with project manager, direction, etc.)

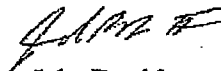
Signed: John Davidson
John Davidson

6 November 1998

MEMORANDUM FOR THE FILE

SUBJECT: I-3692; Mega Sand and Houston International Terminal, Alleged Unauthorized Dredging, Fill in Wetlands and Fill in the San Jacinto River, Harris County, Texas

1. An individual reported, by telephone on 20 March 1998, that someone was mining sand from the San Jacinto River. The reporter also stated the alleged violator was filling wetlands and the San Jacinto River. The project site is located north of Interstate Highway 10, approximately 0.5 mile west of Crosby-Lynchburg Road, in Channelview, Harris County, Texas.
2. A site visit was conducted on 27 April 1998. I met Mr. Dan Moore, owner of Mega Sand, at the site visit. Department of the Army Permit 19284 and subsequent amendments authorized Houston International Terminal to dredge sand for commercial sale and to provide a barge berthing area in the San Jacinto River at the project site specified above. The permit also required the creation of 9 acres of wetlands to compensate for project impacts. The sand dredging is authorized by the permit and is not in violation. The alleged fill in the river is actually the initiation of the mitigation (wetland creation) required by the permit and is not in violation. Additionally, we did not find any evidence of fill material in wetlands, as the project site is an upland where the sand processor is located and open water elsewhere. The activities located in the San Jacinto River are authorized by Permit 19284. There was not a violation of Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. Therefore, Case I-3692 is closed.



John Davidson
Project Manager, North Unit
Enforcement Section

EXHIBIT H-3

JAN 25 2000

EXHIBIT H-3



**HOUSTON
INTERNATIONAL
TERMINAL**

18001 — 1-10
CHANNELVIEW, TEXAS
REPLY TO:
2918 GREEN TEE DRIVE
PEARLAND, TEXAS 77581
936/485-2454

7281

January 24, 2000

United States Corps of Engineers
Galveston, Texas

Attention: Mr. Bruce H. Bennett

VIA Fax 409/766-3931

Re: Permit #19284(2)

Dear Bruce,

It has been a long time since I have been in contact with you or the Corps and after talking to Ms. Tirpak today was pleased to hear that you are well. I have partially retired and as a result may have slipped my anchor concerning the above referenced permit.

Situation:

We received a permit in 1996 to dredge our property, construct a fish nursery with Galveston Bay Foundation and submitted a mitigation plan which was approved.

No work was performed in 1996 and it was late 1997 before operation commenced. Site was inspected by you, Mr. John Davidson and we were contacted by him and the entire operation laid out (See letter dated November 20, 1998, attached).

At this time we respectfully request that this permit be renewed, extended or whatever is required to allow Mega Sand to continue their operation.

UR Corps of Engineers

I was under the impression that permits for this type of operation was for five (5) years, but I understand ignorance is not an excuse. However the operation did not start until 9/97 and we suffered delays in 1998.

Upon receipt of this fax and after your review of our problems will you please contact me at 281/485-2464 or fax 281/485-0538.

Thanking you in advance for yours and the Corps usual prompt attention to this matter, remain,

With Respects,

With Respects,

Capt. Jack Roberts

JR:hr

Attachments

EXHIBIT I

EXHIBIT I

MEGASAND ENTERPRISES, INC.

P.O. BOX 656
HIGHLANDS, TEXAS 77562
OFFICE: 281-843-3000
FAX: 281-843-2390

September 23, 2010

RECEIVED
10 SEP 27 AM 12:00
EPA REGION 6
DALLAS, TEXAS

CERTIFIED MAIL #7009 2250 0003 2430 8308

Mr. Robert Werner
Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S. EPA, Region 6
1445 Ross Ave.
Dallas, TX 75202-2733

Re: San Jacinto River Waste Pits Superfund Site, Channelview, Texas
SSID No. 06ZQ; EPA ID No. TXN000606611

Dear Mr. Werner:

By letter dated August 24, 2010, the EPA sent MegaSand Enterprises, Inc. a CERCLA 104(e) information request regarding the above-referenced matter. Set forth below is the response of MegaSand Enterprises, Inc.

Question 1:

Identify the person(s) that provides answers to the questions below on behalf of MegaSand Enterprises, Inc. (MSEI).

Answer: Danny C. Moore and Brenda L. Moore

Question 2:

Has MSEI ever participated in any planning for dredging activities in the area of the San Jacinto River, along its south bank, on the north side of the I-10 Bridge in Harris County, Texas?



610638

Objection: MSEI objects to this question as unreasonably vague and overbroad. For purposes of this response, MSEI interprets this question to inquire whether the dredging activities were conducted south of the red delineated area on the aerial photo in Enclosure 5. The location of MSEI's dredging in the general area is discussed in the answer to Question 5.

Answer: No.

Question 3:

Has MSEI ever participated in any dredging activities in the area of the San Jacinto River, along its south bank, on the north side of the I-10 Bridge in Harris County, Texas?

Objection: MSEI objects to this question as unreasonably vague and overbroad. For purposes of this response, MSEI interprets this question to inquire whether the dredging activities were conducted south of the red delineated area on the aerial photo in Enclosure 5. The location of MSEI's dredging in the general area is discussed in the answer to Question 5.

Answer: No.

Question 5:

If your answer to the above questions #2 and #3 is no, please explain why a letter, dated November 20, 1998, for Houston International Terminal to Department of the Army, (see Exhibit 5) identifies that, "in late 1997 we entered into a working contract with Mega Sand (Dan & Brenda Moore) who agreed to the mitigation plan. In September 1997 dredging recommenced and work on the mitigation plan started."

Answer: On November 20, 1998, Captain Jack Roberts, owner of Houston International Terminal, had acquired a permit from the U.S. Army Corps of Engineers for the purpose of dredging sand on his property. His property was located west and north of the waste pit site as delineated on the aerial photo in Enclosure 5. During the permitting process the U.S. Army Corps of Engineers required Houston International Terminal to build a cordgrass marsh with overburden material from dredging operation. This was part of the mitigation plan asked for by the Corps of Engineers. MSEI, under an agreement with Houston International Terminal, dredged on the

north and west quadrant of the Roberts' property located west of the waste pits, north of the I-10 Bridge. MSEI, after performing dredging for Houston International Terminal, moved the clay (overburden) over to the mitigation site with dump trucks and dumped along the feeder road on the north side of I-10, west of the waste pits. MSEI used bull dozers to push and spread the clay into the water. After placement of the material, the Galveston Bay Foundation planted cordgrass along the edge of the water.

Question 6:

Please describe the corporate relationship between MegaSand, Inc., a dissolved Texas corporation and MSEI, an active Texas corporation.

Answer: There is no corporate relationship between MegaSand, Inc. and MSEI. MegaSand, Inc., formerly a Texas corporation, was dissolved in 1994. MSEI, a Texas corporation, was incorporated in 1997 and remains in good corporate standing with the Texas Secretary of State office. Brenda Moore served as the sole director and officer of MegaSand, Inc. and is a director and officer of MSEI.

Question 7:

Please identify the names of all dredging companies that you have reason to believe have, at any time, participated in the planning of, and/or participated in, dredging operations in the above-described area of the San Jacinto River.

Answer: None.

Very truly yours,



Danny C. Moore

EXHIBIT J

EXHIBIT J

Axe, Al

From: Axe, Al
Sent: Friday, December 10, 2010 5:16 PM
To: 'Barbara Nann(nann.barbara@epa.gov)
Cc: 'Cermak, John F.'; 'Inglin, Sonja A.
Subject: FW: San Jacinto Waste Pits Superfund Site - Access Issues
Attachments: Pages from San Jacinto NTCRA.pdf; Figure7_TEQ_Sediment_and_Soil.pdf; AUSTIN_1-#618754-v1-HIT_Application.PDF

Barbara,

This is in response to your December 6 email set out below regarding the TxDOT and Big Star access issues.

Respondents are still attempting to work out an agreement with TxDOT on access to build a road and will keep you informed of the status of our discussions.

With respect to Big Star, and its status as a PRP, you are correct that Big Star did not dredge the sand and sediment on the property adjacent to the waste pits. However, these activities were conducted on its property, with its apparent permission, under the authority of a USACOE permit issued to its affiliate, Houston International Terminal (HIT). The sand dredging operation involved the dredging of sand on Big Star property and the associated sand separation activities were also on Big Star property. The USACOE permit was issued to HIT on the basis of an application filed by HIT in which HIT represented that the dredging would occur on HIT's property when, in fact, the property was owned by Big Star. (Please see the attached application dated December 7, 1990). The attached January 27, 2002 satellite photo interpretation shows the sand separation operations on Big Star's property, the dredge cut line that impacted the waste pits, and the alluvial fine deposit resulting from the sand separation. This photo interpretation was provided to EPA by our consultant, Anchor QEA, at a meeting on August 11, 2009.

With all due respect, it does not appear that either the "contiguous property owner" or "federally permitted release" exemptions apply to Big Star.

A person that owns real property that is contiguous to, and that may be contaminated by a release from, real property that is not owned by that person, is not an "owner or operator" under CERCLA only if the person can satisfy each of the eight (8) requirements contained in Section 107(q)(1)(A) of CERCLA. Big Star cannot satisfy a number of the requirements, including the obligation to cooperate and provide access.

One of the eight requirements is that the person did not cause, contribute or consent to the release. By allowing the sand dredging and sand separation activities to be conducted on its property, Big Star arguably contributed to the release.

Another requirement is that the person not be affiliated with any other person that is potentially liable for response costs at a facility through any corporate relationship. As the permittee for the sand dredging operation, HIT is a potentially responsible party at the Site. HIT was the permittee based, in part, on its representation that it owned the property on which the dredging would occur when, in fact, the owner was Big Star. HIT is affiliated with Big Star, and appears to have the same ownership and officers, as reflected in Secretary of State documents. In fact, HIT and Big Star appear to have been treated as one and the same corporation by their principle, Captain Jack Roberts. Thus, Big Star, by virtue of its affiliation with HIT, does not satisfy this condition of the contiguous land owner defense.

Another condition to this defense is that the contiguous land owner take reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental or natural resource exposure to any hazardous substance released on or from property owned by that person. The attached document entitled "Projected Surface Concentrations of Dioxin - Based on Sediment Data from TCEQ (August 2005)" shows a "hot spot" of contamination (Sample No. 11) on the shoreline of Big Star's property where the finer grain materials from the sand separation activities were deposited. This document (which was also provided to EPA at the August 11, 2009 meeting) shows a release from the hot spot into the San Jacinto River with the dioxin concentrations becoming lower as the distance from the hot spot increases. To our knowledge, Big Star has not taken reasonable steps to stop this release. Moreover, it has taken us months to get permission from Big Star to access its property to construct a fence to prevent

human contact to hazardous substances on its property.

Finally, and most importantly, to qualify for the adjacent landowner defense, the owner must provide "full cooperation, assistance, and access to persons that are authorized to conduct response actions at the facility from which there has been a release or threatened release. Big Star was cooperative early in the RI/FS process in allowing our contractors access to conduct sampling on Big Star property. However, Big Star is now being uncooperative in providing the access needed to perform the TCRA.

With respect to the "federally permitted release" defense, the releases that have occurred at the Site have not been in compliance with any federal permit. The USACOE permit did not authorize a release of hazardous substances from the waste pits that are the subject of this case. That permit also did not authorize the release that is occurring from Big Star's property. Moreover, the USACOE permit was issued to HIT, not Big Star, and the releases are occurring on Big Star's property.

You are correct that additional sampling needs to be done on the Big Star "dry land peninsula." However, sediment sampling conducted earlier this year by the Respondents confirm the TCEQ data showing the highest Site dioxin concentrations (other than in the pits themselves) existing just off the Big Star peninsula in the soil/water interface. Please see Sample Nos. 121 and 153 in the attached Figure 7.

Your thoughtful and expedited consideration of this matter is greatly appreciated. It is important to the orderly handling of the TCRA project that Big Star cooperate in providing access for the equipment laydown and material storage area. Please do not hesitate to call if you have any questions. Al

Albert R. Axe, Jr.

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EPA does not agree with Respondents' characterization of the remaining issues with TX DOT. In light of trying to reach a resolution, EPA is attempting to work with TX DOT to provide alternative language for Respondents regarding provisions 6b, 10b, and 10c of the access agreement with TX DOT.

With regards to Big Star, there are salient points omitted from your stated scenario that affects whether Big Star is a PRP. The first and most salient point is that Big Star did not dredge the sediment surrounding the waste pits. That was Houston International Terminal and another company. Secondly, as a landowner of potential Superfund property it is not a given that liability attaches for ownership given EPA's policies and statutory liability protections for contiguous property owners and permit activities under a federally issued permit. In addition, it is not a given that the contamination is on Big Star's property given that the contamination is in the sediment and not on the land (though that may change since all information is not known regarding contamination since EPA is in the beginning of the RI/FS process).

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